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FEDERAL REGISTER

VOLUME 28 NUMBER 64

Washington, Tuesday, April 2, 1963

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FEDERAL REGISTER

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Title 3—THE PRESIDENT

Executive Order 11100

ESTABLISHING THE PRESIDENT'S COMMISSION ON REGISTRATION AND VOTING PARTICIPATION

WHEREAS less than sixty-five percent of the United States population of voting age cast ballots for Presidential electors in 1960; and

WHEREAS popular participation in Government through elections is essential to a democratic form of Government; and

WHEREAS the causes of nonvoting are not fully understood and more effective corrective action will be possible on the basis of a better understanding of the causes of the failure of many citizens to register and vote:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. (a) There is hereby established the President's Commission on Registration and Voting Participation (hereinafter referred to as the Commission).

(b) The Commission shall be composed of not more than eleven members, each of whom shall be appointed by the President. One of the members of the Commission shall be designated by the President as the Chairman thereof.

SEC. 2. The Commission shall:

(a) Study the reasons for the failure of many citizens to register and vote in elections for selection of Members of Congress, the President, and Vice President including:

(1) Laws which restrict registration and voting on the basis of residence, economic status, or other reasons,

(2) Procedures for registration of voters,

(3) Absentee voting provisions, and

(4) Causes of nonvoting by persons who are otherwise qualified to vote.

(b) Prepare and present to the President recommendations for increasing citizen participation in Government through the exercise of the right to vote.

SEC. 3. The Commission shall not consider matters placed under the jurisdiction of the Commission on Civil Rights by the Civil Rights Act of 1957 (71 Stat. 634), as amended.

SEC. 4. All who may be in a position to do so are requested to furnish the Commission information pertinent to its work and otherwise to facilitate the Commission's work.

SEC. 5. Each member of the Commission shall receive compensation of $75 for each day such member is engaged upon the work of the Commission, except that any member who then receives other compensation from the United States shall serve as such member without compensation under this order. The Commission is authorized to appoint such personnel as may be necessary to assist the Commission in connection with the performance of its functions without regard to the civil service and classification laws, but no such personnel shall receive compensation at a rate in excess of $17,500 per annum. The Commission is authorized to obtain services in accordance with the provisions of Section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates not in excess of $75 per diem for individuals.

SEC. 6. The compensation of the members and personnel of the Commission, lawful allowances therefor, and any other necessary expenses arising in connection with the work of the Commission shall be paid from the appropriation appearing under the heading "Special Projects" in title III of the Treasury-Post Office Departments and Executive Office Appropriation Act, 1963, 76 Stat. 310, and such appropriation as may be provided for the same purposes for the fiscal year 1964. Such payments shall be made without regard to the provisions of Section 3681 of the Revised Statutes and Section 9 of the Act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 672 and 673).

SEC. 7. The General Services Administration is hereby designated as the agency which shall provide administrative services for the Commission on a reimbursable basis.

SEC. 8. The Commission in its discretion may transmit to the President such preliminary or interim report or reports as it may deem appropriate. It shall transmit its principal study and recommendations to the President not later than November 30, 1963, together with such supporting materials as it deems appropriate. The Commission shall terminate not later than sixty days after the submission of its principal report to the President.

JOHN F. KENNEDY

THE WHITE HOUSE,
March 30, 1963.

[F.R. Doc. 63-3521; Filed, Apr. 1., 1963; 11:10 a.m.]

Rules and Regulations

Title 1—GENERAL PROVISIONS

Chapter I—Administrative Committee of the Federal Register

CFR CHECKLIST

1963 Issuances

This checklist, published in the first issue of each month, is arranged in order of titles, and shows the issuance date and price of revised volumes and pocket supplements of the Code of Federal Regulations issued to date during 1963. New units issued during the month are announced in the FEDERAL REGISTER as they become available. Order from Superintendent of Documents, Government Printing Office, Washington 25, D.C.

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5 Supp	.60
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51–52 Supp	1.00
210–399 Supp	.55
945–980 Rev	.70
981–999 Rev	.60
1000–1029 Rev	1.00
1030–1059 Rev	1.00
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Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 1581; Amdt. 548]

PART 507—AIRWORTHINESS DIRECTIVES

Macchi Models AL–60 and AL–60B Aircraft

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring inspection of the manifold on Macchi Models AL–60 (formerly LASA 60) and AL–60B aircraft and replacement or repair of any which are found cracked was published in 28 F.R. 1061.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6439), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

MACCHI. Applies to all Models AL–60 (formerly LASA 60) and AL–60B aircraft Compliance required as indicated.

As a result of several cases of engine exhaust manifold failures, accomplish the following within the next 25 hours' time in service after the effective date of this AD, and thereafter within every 25 hours' time in service from the last inspection.

(a) Inspect the turbo inlet assembly manifold P/N 629–250 for cracks in the weld area between the two exhaust pipes.

(b) If cracks are found, replace or repair the part before further flight. Repair by arc welding a stainless steel plate reinforcement over the area in accordance with Aeronautical Macchi Service Bulletin No. 1, or FAA approved equivalent repair.

This amendment shall become effective May 2, 1963.

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on March 26, 1963.

G. S. MOORE,
Acting Director,
Flight Standards Service.

[F.R. Doc. 63–3355; Filed, Apr. 1, 1963; 8:45 a.m.]

[Reg. Docket No. 1588; Amdt. 549]

PART 507—AIRWORTHINESS DIRECTIVES

Rolls Royce Dart Engines

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring modification of the Rolls Royce Dart engine was published in 28 F.R. 1265.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

ROLLS ROYCE. Applies to all Model Dart engines.

Compliance required as indicated.

To prevent failures in service of combustion chamber air casings of Pre-Modification 553 standard, which failures have been attributed to fatigue cracks originating around suspension pin soleplates, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD, on engines with combustion chamber air casings not incorporating Modification 553 standards except engines with air casings of Pre-Modification 97 standards, accomplish (1) or (2):

(1) Install strengthened air casings incorporating Rolls Royce Modification 553 standards; or

(2) Install air casing straps using:

(i) Mod. 612 standards which modification sets forth a positive location for antitear straps for Pre-Mod. 553 air casings; or

(ii) Mod. 1021 standards which modification covers Pre-Mod. 553 air casings which have been modified to Mod. 855 standards providing an additional boss for burner cleaning.

(b) Remove air casings of Pre-Mod. 97 standard at the next engine overhaul and replace with air casings conforming to the standards set forth in (a).

(Rolls Royce Notice to Operators Dart Engines No. 99 Issue 3 dated June 29, 1962, covers the same subject.)

This amendment shall become effective May 2, 1963.

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on March 26, 1963.

G. S. MOORE,
Director,
Flight Standards Service.

[F.R. Doc. 63–3356; Filed, Apr. 1, 1963; 8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Health, Education, and Welfare

Effective upon publication in the FEDERAL REGISTER, subparagraph (3) of paragraph (d) of § 6.114 is revoked and a new paragraph (g) (1) is added as set out below.

§ 6.114 Department of Health, Education, and Welfare.

* * * * *

(g) *Welfare Administration.* (1) Not to exceed 150 positions directly concerned with programs conducted by the Department in connection with the problems of Cuban refugees: *Provided,* That employment under this authority shall be temporary and no employment shall be made under it after June 30, 1964.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 63-3398; Filed, Apr. 1, 1963; 8:49 a.m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Housing and Home Finance Agency

Effective upon publication in the FEDERAL REGISTER, subparagraph (22) of paragraph (b) of § 6.342 is revoked and subparagraph (1) of paragraph (b) is amended as set out below.

§ 6.342 Housing and Home Finance Agency.

* * * * *

(b) *Federal Housing Administration.* (1) One Deputy Commissioner.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 63-3399; Filed, Apr. 1, 1963; 8:49 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

POLYETHYLENE GLYCOL

The Commissioner of Food and Drugs, having evaluated data submitted in petions filed by Kadison Laboratories, Inc., 1850 West 43d Street, Chicago 9, Illinois, and Union Carbide Chemicals Company, Post Office Box 65, Tarrytown, New York, and other relevant material, has concluded that the following regulations should issue to prescribe safe conditions of use of polyethylene glycol. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations are amended by adding to Subpart D the following new section:

§ 121.1121 Polyethylene glycol minimum molecular weight 1,300.

Polyethylene glycol having a minimum molecular weight of 1,300 may be safely used in food in accordance with the following conditions:

(a) It is used as a coating on sodium nitrite to inhibit the hygroscopic property of sodium nitrite.

(b) It is used in an amount not in excess of that required to produce its intended effect.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: March 26, 1963.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 63-3391; Filed, Apr. 1, 1963; 8:48 a.m.]

Chapter II—Bureau of Narcotics, Department of the Treasury

[T.D. 71]

PART 305—OPIATES

Pethidine-Intermediate-C Classified as an Opiate

Notice is hereby given pursuant to the provisions of section 5(b) of the Narcotics Manufacturing Act of 1960, 74 Stat. 60, 21 U.S.C. 503(b), Supp. III and 21 CFR 307.61(b) that the United States has received notification under date of December 26, 1962, from the Secretary-General of the United Nations that the World Health Organization has found a certain substance, not heretofore determined to be an opiate, to fall under the regime laid down in the 1931 Convention for the drugs specified in Article 1, paragraph 2, Group I of that Convention.

The substance and its salts to which the World Health Organization decision relates and which has been found by that Organization to be convertible into a drug capable of producing addiction is:

(Pethidine-intermediate-C) 1-methyl-4-phenylpiperidine-4-carboxylic acid.

Accordingly, § 305.2(b) is amended by adding a new drug to the chronological list of findings. As amended, § 305.2(b) reads as follows:

§ 305.2 Chronological list of findings.

* * * * *

(b) The following is a chronological list of drugs or other substances found by the World Health Organization as being capable of producing addiction or of conversion into a drug or other substance capable of producing addiction and designated as opiates by the Commissioner of Narcotics pursuant to the provisions of § 307.61(b) of this chapter. Drugs and other substances listed include any salts thereof.

June 20, 1962

(Methadone - intermediate) 4 - cyano-2-di - methylamino-4,4 diphenylbutane.
(Pethidine - intermediate - A) 4-cyano-1-methyl-4-phenylpiperidine.
(Moramide-intermediate) 2-methyl-3-morpholino - 1,1 - diphenylpropanecarboxylic acid.

April 2, 1963

(Pethidine - intermediate - C) 1-methyl-4-phenylpiperidine-4-carboxylic acid.

Because this amendment of § 305.2 (b) merely adds to the chronological list of findings a new drug designated by the World Health Organization as being convertible into a drug capable of producing addiction and therefore recognized and published as an opiate by the Commissioner of Narcotics under the provisions of section 5(b) of the Narcotics Manufacturing Act of 1960, 74 Stat. 60, 21 U.S.C. 503(b), Supp. III and 21 CFR 307.61(b), it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

Effective date. This Treasury Decision shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 5(b) Pub. Law 86-429 (74 Stat. 60); sec. 17, Pub. Law 86-429 (74 Stat. 67))

[SEAL] HENRY L. GIORDANO,
Commissioner of Narcotics.

Approved: March 25, 1963.

JAMES A. REED,
Assistant Secretary of the Treasury.

[F.R. Doc. 63-3394; Filed, Apr. 1, 1963; 8:48 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 663]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Taxation of Cooperatives, and Their Patrons

On December 29, 1962, notice of proposed rule making with respect to the regulations under sections 1381 through

1388 of the Internal Revenue Code of 1954 as added by section 17(a) of the Revenue Act of 1962 (76 Stat. 1045), relating to the taxation of cooperatives and their patrons, and with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform them to the rules relating to the taxation of cooperatives and their patrons prescribed under sections 1381 through 1388, was published in the FEDERAL REGISTER (27 F.R. 12943). The regulations under sections 1381 through 1388 are effective with respect to taxable years of cooperative organizations beginning after December 31, 1962, and are applicable to distributions made by such organizations attributable to patronage occurring during such taxable years. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations proposed are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Paragraph (c)(3) of § 1.1382–3, as set forth in paragraph 1 of the notice of proposed rule making, is changed.

PAR. 2. Section 1.1383–1, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising paragraphs (a)(3) and (d).

PAR. 3. Section 1.1388–1, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising paragraphs (a)(1), (a)(2)(iv), (c)(1), and (c)(3)(ii)(*a*), and by adding a new paragraph (e).

PAR. 4. Paragraph (f) of § 1.521–1, as set forth in paragraph 4 of the notice of proposed rule making, is changed.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: March 28, 1963.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

The regulations under sections 1381 through 1388 of the Internal Revenue Code of 1954, as added by section 17(a) of the Revenue Act of 1962 (76 Stat. 1045), relating to the taxation of cooperatives and their patrons, set forth in paragraph 1 are hereby prescribed, effective for taxable years of cooperative organizations beginning after December 31, 1962, and applicable to distributions made by such organizations attributable to patronage occurring during such taxable years. In addition, the Income Tax Regulations (26 CFR Part 1) are amended as set forth in paragraphs 2 through 9 to conform them to the rules relating to the taxation of cooperatives and their patrons prescribed under sections 1381 through 1388.

COOPERATIVES AND THEIR PATRONS

TAX TREATMENT OF COOPERATIVES

TAX TREATMENT BY PATRONS OF PATRONAGE DIVIDENDS

DEFINITIONS; SPECIAL RULES

AUTHORITY: §§ 1.1381 to 1.1388–1 issued under sec. 7805 of the Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805.

PARAGRAPH 1. The following new sections are inserted after § 1.1377–3:

COOPERATIVES AND THEIR PATRONS

TAX TREATMENT OF COOPERATIVES

§ 1.1381 Statutory provisions; tax treatment of cooperatives; organizations to which part applies.

SEC. 1381. *Organizations to which part applies*—(a) *In general.* This part shall apply to—

(1) Any organization exempt from tax under section 521 (relating to exemption of farmers' cooperatives from tax), and

(2) Any corporation operating on a cooperative basis other than an organization—

(A) Which is exempt from tax under this chapter,

(B) Which is subject to the provisions of—

(i) Part II of subchapter H (relating to mutual savings banks, etc.), or

(ii) Subchapter L (relating to insurance companies), or

(C) Which is engaged in furnishing electric energy, or providing telephone service, to persons in rural areas.

(b) *Tax on certain farmers' cooperatives.* An organization described in subsection (a)(1) shall be subject to the taxes imposed by section 11 or 1201.

[Sec. 1381 as added by sec. 17(a), Rev. Act 1962 (76 Stat. 1045)]

§ 1.1381–1 Organizations to which part applies.

(a) *In general.* Except as provided in paragraph (b) of this section, part I, subchapter T, chapter 1 of the Code, applies to any corporation operating on a cooperative basis and allocating amounts to patrons on the basis of the business done with or for such patrons.

(b) *Exceptions.* Part I of such subchapter T does not apply to—

(1) Any organization which is exempt from income taxes under chapter 1 of the Code (other than an exempt farmers' cooperative described in section 521);

(2) Any organization which is subject to the provisions of part II (section 591 and following), subchapter H, chapter 1 of the Code (relating to mutual savings banks, etc.);

(3) Any organization which is subject to the provisions of subchapter L (section 801 and following), chapter 1 of the Code (relating to insurance companies); or

(4) Any organization which is engaged in generating, transmitting, or otherwise furnishing electric energy, or which provides telephone service, to persons in rural areas. The terms "rural areas" and "telephone service" shall have the meaning assigned to them in section 5 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 924).

§ 1.1381–2 Tax on certain farmers' cooperatives.

(a) *In general.* (1) For taxable years beginning after December 31, 1962, farmers', fruit growers', or like associations, organized and operated in compliance with the requirements of section 521 and § 1.521–1, shall be subject to the taxes imposed by section 11 or section 1201. Although such associations are subject to both normal tax and surtax, as in the case of corporations generally, certain special deductions are provided for them in section 1382(c) and § 1.1382–3. For the purpose of any law which refers to organizations exempt from income taxes such an association shall, however, be considered as an organization exempt under section 501. Thus, the provisions of section 243, providing a credit for dividends received from a domestic corporation subject to taxation, are not applicable to dividends received from a cooperative association organized and operated in compliance with the requirements of section 521 and § 1.521–1. The provisions of section 1501, relating to consolidated returns, are likewise not applicable.

(2) Rules governing the manner in which amounts paid as patronage dividends are allowable as deductions in computing the taxable income of such an association are set forth in section 1382(b) and § 1.1382–2. For the tax treatment, as to patrons, of amounts received during the taxable year as patronage dividends, see section 1385 and the regulations thereunder.

(b) *Cross references.* For tax treatment of exempt cooperative associations for taxable years beginning before January 1, 1963, or for taxable years beginning after December 31, 1962, with respect to payments attributable to patronage occurring during taxable years beginning before January 1, 1963, see section 522 and the regulations there-

under. For requirements of annual returns by such associations, see sections 6012 and 6072(d) and paragraph (f) of § 1.6012–2.

§ 1.1382 Statutory provisions; tax treatment of cooperatives; taxable income of cooperatives.

SEC. 1382. *Taxable income of cooperatives*—(a) *Gross income.* Except as provided in subsection (b), the gross income of any organization to which this part applies shall be determined without any adjustment (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) by reason of any allocation or distribution to a patron out of the net earnings of such organization.

(b) *Patronage dividends.* In determining the taxable income of an organization to which this part applies, there shall not be taken into account amounts paid during the payment period for the taxable year—

(1) As patronage dividends (as defined in section 1388(a)), to the extent paid in money, qualified written notices of allocation (as defined in section 1388(c)), or other property (except nonqualified written notices of allocation (as defined in section 1388(d))) with respect to patronage occurring during such taxable year; or

(2) In money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred.

For purposes of this title, any amount not taken into account under the preceding sentence shall be treated in the same manner as an item of gross income and as a deduction therefrom.

(c) *Deduction for nonpatronage distributions, etc.* In determining the taxable income of an organization described in section 1381(a)(1), there shall be allowed as a deduction (in addition to other deductions allowable under this chapter)—

(1) Amounts paid during the taxable year as dividends on its capital stock; and

(2) Amounts paid during the payment period for the taxable year—

(A) In money, qualified written notices of allocation, or other property (except nonqualified written notices of allocation) on a patronage basis to patrons with respect to its earnings during such taxable year which are derived from business done for the United States or any of its agencies or from sources other than patronage, or

(B) In money or other property (except written notices of allocation) in redemption of a nonqualified written notice of allocation which was paid, during the payment period for the taxable year during which the earnings were derived, on a patronage basis to a patron with respect to earnings derived from business or sources described in subparagraph (A).

(d) *Payment period for each taxable year.* For purposes of subsections (b) and (c)(2), the payment period for any taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year. For purposes of subsections (b)(1) and (c)(2)(A), a qualified check issued during the payment period shall be treated as an amount paid in money during such period if endorsed and cashed on or before the 90th day after the close of such period.

(e) *Products marketed under pooling arrangements.* For purposes of subsection (b), in the case of a pooling arrangement for the marketing of products, the patronage shall (to the extent provided in regulations prescribed by the Secretary or his delegate) be treated as patronage occurring during the taxable year in which the pool closes.

(f) *Treatment of earnings received after patronage occurred.* If any portion of the earnings from business done with or for patrons is includible in the organization's gross income for a taxable year after the taxable year during which the patronage occurred, then for purposes of applying subsection (b) to such portion the patronage shall, to the extent provided in regulations prescribed by the Secretary or his delegate, be considered to have occurred during the taxable year of the organization during which such earnings are includible in gross income.

[Sec. 1382 as added by sec. 17(a), Rev. Act 1962 (76 Stat. 1046)]

§ 1.1382–1 Taxable income of cooperatives; gross income.

(a) *Introduction.* Section 1382(b) provides that the amount of certain patronage dividends (and amounts paid in redemption of nonqualified written notices of allocation) shall not be taken into account by a cooperative organization in determining its taxable income. Such section also provides that, for purposes of the Internal Revenue Code, an amount not taken into account is to be treated in the same manner as an item of gross income and as a deduction therefrom. Therefore, such an amount is treated as a deduction for purposes of applying the Internal Revenue Code and the regulations thereunder and, for simplicity, is referred to as a deduction in the regulations under such Code. However, this should not be regarded as a determination of the character of the amount for other purposes.

(b) *Computation of gross income.* Any cooperative organization to which part I, subchapter T, chapter 1 of the Code, applies shall not, for any purpose under the Code, exclude from its gross income (as a reduction in gross receipts, an increase in cost of goods sold, or otherwise) the amount of any allocation or distribution to a patron out of the net earnings of such organization with respect to patronage occurring during a taxable year beginning after December 31, 1962. See, however, section 1382(b) and § 1.1382–2 for deductions for certain amounts paid to patrons out of net earnings.

§ 1.1382–2 Taxable income of cooperatives; treatment of patronage dividends.

(a) *In general.* (1) In determining the taxable income of any cooperative organization to which part I, subchapter T, chapter 1 of the Code, applies, there shall be allowed as deductions from gross income, in addition to the other deductions allowable under chapter 1 of the Code, the deductions with respect to patronage dividends provided in section 1382(b) and paragraphs (b) and (c) of this section.

(2) For the definition of terms used in this section see section 1388 and §.1.1388–1; to determine the payment period for a taxable year, see section 1382(d) and § 1.1382–4.

(b) *Deduction for patronage dividends*—(1) *In general.* In the case of a taxable year beginning after December 31, 1962, there is allowed as a deduction from the gross income of any cooperative organization to which part I of subchapter T applies, amounts paid to patrons during the payment period for the taxable year as patronage dividends with respect to patronage occurring during such taxable year, but only to the extent that such amounts are paid in money, qualified written notices of allocation, or other property (other than nonqualified written notices of allocation). See section 1382 (e) and (f) and §§ 1.1382–5 and 1.1382–6 for special rules relating to the time when patronage is deemed to occur where products are marketed under a pooling arrangement or where earnings are includible in the gross income of the cooperative organization for a taxable year after the year in which the patronage occurred. For purposes of this paragraph, a written notice of allocation is considered paid when it is issued to the patron. A patronage dividend shall be treated as paid in money during the payment period for the taxable year to the extent it is paid by a qualified check which is issued during the payment period for such taxable year and endorsed and cashed on or before the ninetieth day after the close of such payment period. In determining the amount paid which is allowable as a deduction under this paragraph, property (other than written notices of allocation) shall be taken into account at its fair market value when paid, and a qualified written notice of allocation shall be taken into account at its stated dollar amount.

(2) *Special rule for certain taxable years.* No deduction is allowed under this section for amounts paid during taxable years beginning before January 1, 1963, or for amounts paid during taxable years beginning after December 31, 1962, with respect to patronage occurring during taxable years beginning before January 1, 1963. With respect to such amounts, the Internal Revenue Code of 1954 (including section 522 and the regulations thereunder) shall be applicable without regard to subchapter T.

(c) *Deduction for amounts paid in redemption of certain nonqualified written notices of allocation.* In the case of a taxable year beginning after December 31, 1962, there is allowed as a deduction from the gross income of a cooperative organization to which part I of subchapter T applies, amounts paid by such organization during the payment period for such taxable year in redemption of a nonqualified written notice of allocation which was previously paid as a patronage dividend during the payment period for the taxable year during which the patronage occurred, but only to the extent such amounts (1) are paid in money or other property (other than written notices of allocation) and (2) do not exceed the stated dollar amount

of such written notice of allocation. No deduction shall be allowed under this paragraph, however, for amounts paid in redemption of nonqualified written notices of allocation which were paid with respect to patronage occurring during a taxable year beginning before January 1, 1963. For purposes of this paragraph, if an amount is paid within the payment period for two or more taxable years, it will be allowable as a deduction only for the earliest of such taxable years. Thus, if a cooperative which reports its income on a calendar year basis pays an amount in redemption of a nonqualified written notice of allocation on January 15, 1966, it will be allowed a deduction for such amount only for its 1965 taxable year. In determining the amount paid which is allowable as a deduction under this paragraph, property (other than written notices of allocation) shall be taken into account at its fair market value when paid. Amounts paid in redemption of a nonqualified written notice of allocation in excess of its stated dollar amount shall be treated under the applicable provisions of the Code. For example, if such excess is in the nature of interest, its deductibility will be governed by section 163 and the regulations thereunder.

§ 1.1382–3 Taxable income of cooperatives; special deductions for exempt farmers' cooperatives.

(a) *In general.* (1) Section 1382(c) provides that in determining the taxable income of a farmers', fruit growers', or like association, described in section 1381(a)(1) and organized and operated in compliance with the requirements of section 521 and § 1.521–1, there shall be allowed as deductions from the gross income of such organization, in addition to the other deductions allowable under chapter 1 of the Code (including the deductions allowed by section 1382(b)) the special deductions provided in section 1382(c) and paragraphs (b), (c), and (d) of this section.

(2) For the definition of terms used in this section, see section 1388 and § 1.1388–1; to determine the payment period for a taxable year, see section 1382 (d) and § 1.1382–4.

(b) *Deduction for dividends paid on capital stock.* In the case of a taxable year beginning after December 31, 1962, there is allowed as a deduction from the gross income of a cooperative association operated in compliance with the requirements of section 521 and § 1.521–1, amounts paid as dividends during the taxable year on the capital stock of such cooperative association. For the purpose of the preceding sentence, the term "capital stock" includes common stock (whether voting or nonvoting), preferred stock, or any other form of capital represented by capital retain certificates, revolving fund certificates, letters of advice, or other evidence of a proprietary interest in a cooperative association. Such deduction is applicable only to the taxable year in which the dividends are actually or constructively paid to the holder of capital stock or other proprietary interest in the cooperative association. If a dividend is paid by check and the check bearing a date within the taxable year is deposited in the mail, in a cover properly stamped and addressed to the shareholder at his last known address, at such time that in the ordinary handling of the mails the check would be received by such holder within the taxable year, a presumption arises that the dividend was paid to such holder in such year. The determination of whether a dividend has been paid to such holder by the corporation during its taxable year is in no way dependent upon the method of accounting regularly employed by the corporation in keeping its books. For further rules as to the determination of the right to a deduction for dividends paid, under certain specific circumstances, see section 561 and the regulations thereunder.

(c) *Deduction for amounts allocated from income not derived from patronage.*—(1) *In general.* In the case of a taxable year beginning after December 31, 1962, there is allowed as a deduction from the gross income of a cooperative association operated in compliance with the requirements of section 521 and § 1.521–1, amounts paid to patrons, during the payment period for the taxable year, on a patronage basis with respect to its income derived during such taxable year either from business done with or for the United States or any of its agencies or from sources other than patronage, but only to the extent such amounts are paid in money, qualified written notices of allocation, or other property (other than nonqualified written notices of allocation). For purposes of this subparagraph a written notice of allocation is considered paid when it is issued to the patron. An amount shall be treated as paid in money during the payment period for the taxable year to the extent it is paid by a qualified check which is issued during the payment period for such taxable year and endorsed and cashed on or before the ninetieth day after the close of such payment period. In determining the amount paid which is allowable as a deduction under this paragraph, property (other than written notices of allocation) shall be taken into account at its fair market value when paid, and a qualified written notice of allocation shall be taken into account at its stated dollar amount.

(2) *Definition.* As used in this paragraph, the term "income derived from sources other than patronage" means incidental income derived from sources not directly related to the marketing, purchasing, or service activities of the cooperative association. For example, income derived from the lease of premises, from investment in securities, or from the sale or exchange of capital assets, constitutes income derived from sources other than patronage.

(3) *Basis of distribution.* In order that the deduction for amounts paid with respect to income derived from business done with or for the United States or any of its agencies or from sources other than patronage may be applicable, it is necessary that the amount sought to be deducted be paid on a patronage basis in proportion, insofar as is practicable, to the amount of business done by or for patrons during the period to which such income is attributable. For example, if capital gains are realized from the sale or exchange of capital assets acquired and disposed of during the taxable year, income realized from such gains must be paid to patrons of such year in proportion to the amount of business done by such patrons during the taxable year. Similarly, if capital gains are realized by the association from the sale or exchange of capital assets held for a period extending into more than one taxable year income realized from such gains must be paid, insofar as is practicable, to the persons who were patrons during the taxable years in which the asset was owned by the association in proportion to the amount of business done by such patrons during such taxable years.

(4) *Special rules for certain taxable years.* No deduction is allowable under this paragraph for amounts paid during taxable years beginning before January 1, 1963, or for amounts paid during taxable years beginning after December 31, 1962, with respect to income derived during taxable years beginning before January 1, 1963. With respect to such amounts, the Internal Revenue Code of 1954 (including section 522 and the regulations thereunder) shall be applicable without regard to subchapter T.

(d) *Deduction for amounts paid in redemption of certain nonqualified written notices of allocation.* In the case of a taxable year beginning after December 31, 1962, there is allowed as a deduction from the gross income of a cooperative association operated in compliance with the requirements of section 521 and § 1.521–1, amounts paid by such association during the payment period for such taxable year in redemption of certain nonqualified written notices of allocation, but only to the extent such amounts (1) are paid in money or other property (other than written notices of allocation) and (2) do not exceed the stated dollar amount of such nonqualified written notices of allocation. The nonqualified written notices of allocation referred to in the preceding sentence are those which were previously paid to patrons on a patronage basis with respect to earnings derived either from business done with or for the United States or any of its agencies or from sources other than patronage, provided that such nonqualified written notices of allocation were paid during the payment period for the taxable year during which such earnings were derived. No deduction shall be allowed under this paragraph, however, for amounts paid in redemption of nonqualified written notices of allocation which were paid with respect to earnings derived during a taxable year beginning before January 1, 1963. For purposes of this paragraph, if an amount is paid within the payment period for two or more taxable years, it will be allowable as a deduction only for the earliest of such taxable years. In determining the amount paid which is allowable as a deduction under this paragraph, property (other than written notices of allocation) shall be taken into account at its fair market value when paid. Amounts paid

in redemption of a nonqualified written notice of allocation in excess of its stated dollar amount shall be treated under the applicable provisions of the Code.

§ 1.1382–4 Taxable income of cooperatives; payment period for each taxable year.

The payment period for a taxable year is the period beginning with the first day of such taxable year and ending with the fifteenth day of the ninth month following the close of such year.

§ 1.1382–5 Taxable income of cooperatives; products marketed under pooling arrangements.

For purposes of section 1382(b) and § 1.1382–2, in the case of a pooling arrangement for the marketing of products the patronage under such pool shall be treated as occurring during the taxable year in which the pool closes. The determination of when a pool is closed will be made on the basis of the facts and circumstances in each case, but generally the practices and operations of the cooperative organization shall control. This section may be illustrated by the following example:

Example. Farmer A delivers to the X Cooperative 100 bushels of wheat on August 15, 1963, at which time he receives a "per bushel" advance. (Both farmer A and the X Cooperative file returns on a calendar year basis.) On October 15, 1963 farmer A receives an additional "per bushel" payment. The pool sells some of its wheat in 1963 and the remainder in January of 1964. The pool is closed on February 15, 1964. For purposes of section 1382(b), A's patronage is considered as occurring in 1964.

§ 1.1382–6 Taxable income of cooperatives; treatment of earnings received after patronage occurred.

If earnings derived from business done with or for patrons are includible in the gross income of the cooperative organization for a taxable year after the taxable year during which the patronage occurred, then, for purposes of determining whether the cooperative is allowed a deduction under section 1382(b) and § 1.1382–2, the patronage to which these earnings relate shall be considered to have occurred during the taxable year for which such earnings are includible in the cooperative's gross income. Thus, if the cooperative organization pays these earnings out as patronage dividends during the payment period for the taxable year for which the earnings are includible in its gross income, it will be allowed a deduction for such payments under section 1382(b)(1) and paragraph (b) of § 1.1382–2, to the extent they are paid in money, qualified written notices of allocation, or other property (other than written notices of allocation).

§ 1.1382–7 Special rules applicable to cooperative associations exempt from tax before January 1, 1952.

(a) *Basis of property.* The adjustments to the cost or other basis provided in sections 1011 and 1016 and the regulations thereunder, are applicable for the entire period since the acquisition of the property. Thus, proper adjustment to basis must be made under section 1016 for depreciation, obsolescence, amortization, and depletion for all taxable years beginning prior to January 1, 1952, although the cooperative association was exempt from tax under section 521 or corresponding provisions of prior law for such years. However, no adjustment for percentage or discovery depletion is to be made for any year during which the association was exempt from tax. If a cooperative association has made a proper election in accordance with section 1020 and the regulations prescribed thereunder with respect to a taxable year beginning before 1952 in which the association was not exempt from tax, the adjustment to basis for depreciation for such years shall be limited in accordance with the provisions of section 1016(a)(2).

(b) *Amortization of bond premium.* In the case of tax exempt and partially taxable bonds purchased at a premium and subject to amortization under section 171, proper adjustment to basis must be made to reflect amortization with respect to such premium from the date of acquisition of the bond. (For principles governing the method of computation, see the example in paragraph (b) of § 1.1016–9, relating to mutual savings banks, building and loan associations, and cooperative banks.) The basis of a fully taxable bond purchased at a premium shall be adjusted from the date of the election to amortize such premium in accordance with the provisions of section 171 except that no adjustment shall be allowable for such portion of the premium attributable to the period prior to the election.

(c) *Amortization of mortgage premium.* In the case of a mortgage acquired at a premium where the principal of such mortgage is payable in installments, adjustments to the basis for the premium must be made for all taxable years (whether or not the association was exempt from tax under section 521 during such years) in which installment payments are received. Such adjustments may be made on an individual mortgage basis or on a composite basis by reference to the average period of payments of the mortgage loans of such association. For the purpose of this adjustment, the term "premium" includes the excess of the acquisition value of the mortgage over its maturity value. The acquisition value of the mortgage is the cost including buying commissions, attorneys' fees, or brokerage fees, but such value does not include amounts paid for accrued interest.

§ 1.1383 Statutory provisions; tax treatment of cooperatives; computation of tax where cooperative redeems nonqualified written notices of allocation.

SEC. 1383. *Computation of tax where cooperative redeems nonqualified written notices of allocation*—(a) *General rule.* If, under section 1382(b)(2) or (c)(2)(B), a deduction is allowable to an organization for the taxable year for amounts paid in redemption of nonqualified written notices of allocation, then the tax imposed by this chapter on such organization for the taxable year shall be the lesser of the following:

(1) The tax for the taxable year computed with such deduction; or

(2) An amount equal to—

(A) The tax for the taxable year computed without such deduction, minus

(B) The decrease in tax under this chapter for any prior taxable year (or years) which would result solely from treating such nonqualified written notices of allocation as qualified written notices of allocation.

(b) *Special rules.* (1) If the decrease in tax ascertained under subsection (a)(2)(B) exceeds the tax for the taxable year (computed without the deduction described in subsection (a)) such excess shall be considered to be a payment of tax on the last day prescribed by law for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for such taxable year.

(2) For purposes of determining the decrease in tax under subsection (a)(2)(B), the stated dollar amount of any nonqualified written notice of allocation which is to be treated under such subsection as a qualified written notice of allocation shall be the amount paid in redemption of such written notice of allocation which is allowable as a deduction under section 1382 (b)(2) or (c)(2)(B) for the taxable year.

(3) If the tax imposed by this chapter for the taxable year is the amount determined under subsection (a)(2), then the deduction described in subsection (a) shall not be taken into account for any purpose of this subtitle other than for purposes of this section.

[Sec. 1383 as added by sec. 17(a), Rev. Act 1962 (76 Stat. 1047)]

§ 1.1383–1 Computation of tax where cooperative redeems nonqualified written notices of allocation.

(a) *General rule.* (1) If, during the taxable year, a cooperative organization is entitled to a deduction under section 1382 (b)(2) or (c)(2)(B) for amounts paid in redemption of nonqualified written notices of allocation, the tax imposed for the taxable year by chapter 1 of the Code shall be the lesser of—

(i) The tax for the taxable year computed under section 1383(a)(1), that is, with such deduction taken into account, or

(ii) The tax for the taxable year computed under section 1383(a)(2), that is, without taking such deduction into account, minus the decrease in tax (under chapter 1 of the Code) for any prior taxable year (or years) which would result solely from treating all such nonqualified written notices of allocation redeemed during the taxable year as qualified written notices of allocation when paid. For the purpose of this subdivision, the amount of the decrease in tax is not limited to the amount of the tax for the taxable year. See paragraph (c) of this section for rules relating to a refund of tax where the decrease in tax for the prior taxable year (or years) exceeds the tax for the taxable year.

(2) If the cooperative organization computes its tax for the taxable year under the provisions of section 1383(a)(2) and subparagraph (1)(ii) of this paragraph, then no deduction under section 1382 (b)(2) or (c)(2)(B) shall be taken into account in computing taxable income or loss for the taxable year, including the computation of any net operating loss carryback or carryover. However, the amount of the deduction shall be taken into account in adjusting earnings and profits for the taxable year.

(3) If the tax determined under subparagraph (1)(i) of this paragraph is the same as the tax determined under subparagraph (1)(ii) of this paragraph,

the tax imposed for the taxable year under chapter 1 of the Code shall be the tax determined under subparagraph (1)(i) of this paragraph, and section 1383 and this section shall not otherwise apply. The tax imposed for the taxable year shall be the tax determined under subparagraph (1)(ii) of this paragraph in any case when a credit or refund would be allowable for the taxable year under section 1383(b)(1).

(b) *Determination of decrease in tax for prior taxable years*—(1) *Prior taxable years.* The prior taxable year (or years) referred to in paragraph (a) of this section is the year (or years) within the payment period for which the nonqualified written notices of allocation were paid and, in addition, any other prior taxable year (or years) which is affected by the adjustment to income by reason of treating such nonqualified written notices of allocation as qualified written notices of allocation when paid.

(2) *Adjustment to income in prior taxable years.* The deduction for the prior taxable year (or years) in determining the decrease in tax under section 1383(a)(2)(B) and paragraph (a)(1)(ii) of this section shall be the amount paid in redemption of the nonqualified written notices of allocation which, without regard to section 1383, is allowable as a deduction under section 1382(b)(2) or (c)(2)(B) for the current taxable year.

(3) *Computation of decrease in tax for prior taxable years.* In computing the amount of decrease in tax for a prior taxable year (or years) resulting under this section, there must first be ascertained the amount of tax previously determined for the taxpayer for such prior taxable year (or years). The tax previously determined shall be the sum of the amounts shown as such tax by the taxpayer on his return or returns, plus any amounts which have been previously assessed (or collected without assessment) as deficiencies, reduced by the amount of any rebates which have previously been made. The amount shown as the tax by the taxpayer on his return and the amount of any rebates or deficiencies shall be determined in accordance with the provisions of section 6211 and the regulations thereunder. After the tax previously determined has been ascertained, a recomputation must then be made to determine the decrease in tax, if any, resulting under this section. In determining the decrease in tax for the prior taxable year (or years), appropriate adjustment shall be made to any item which is dependent upon the amount of gross income or taxable income (such as charitable contributions, net operating losses, the foreign tax credit, and the dividends received credit).

(c) *Refunds.* If the decrease in tax for the prior taxable year (or years) determined under section 1383(a)(2)(B) and paragraph (a)(1)(ii) of this section exceeds the tax imposed by chapter 1 of the Code for the taxable year computed without the deduction under section 1382(b) or (c)(2)(B), the excess shall be considered to be a payment of tax for the taxable year of the deduction. Such payment is deemed to have been made on the last day prescribed by law for the payment of tax for the taxable year and shall be refunded or credited in the same manner as if it were an overpayment of tax for such taxable year. See section 6151 and the regulations thereunder, for rules relating to time and place for paying tax shown on returns.

(d) *Example.* The application of section 1383 may be illustrated by the following example:

Example. The X Cooperative (which reports its income on a calendar year basis) pays patronage dividends of $100,000 in nonqualified written notices of allocation on February 1, 1964, with respect to patronage occurring in 1963. Since the patronage dividends of $100,000 were paid in nonqualified written notices of allocation the X Cooperative is not allowed a deduction for that amount for 1963. On December 1, 1966, the X Cooperative redeems these nonqualified written notices of allocation for $50,000. Under section 1382(b)(2), a deduction of $50,000 is allowable in computing its taxable income for 1966. However, the X Cooperative has a loss for 1966 determined without regard to this deduction. The X Cooperative, therefore, makes the computation under the alternative method provided in section 1383(a)(2). Under this alternative method, it will claim a credit or refund (as an overpayment of tax for 1966) of the decrease in tax for 1963 and for such other years prior to 1966 as are affected which results from recomputing its tax for 1963 (and such other years affected) as if patronage dividends of $50,000 had been paid on February 1, 1964, in qualified written notices of allocation. In addition, under this alternative the X Cooperative cannot use the $50,000 as a deduction for 1966 so as to increase its net operating loss for such year for purposes of computing a net operating loss carryback or carryover. If the X Cooperative also redeems on December 1, 1966, nonqualified written notices of allocation which were paid as patronage dividends on February 1, 1965, with respect to patronage occurring in 1964, it will claim a credit or refund (as an overpayment of tax for 1966) of the decrease in tax for 1964 and for such other years prior to 1966 as are affected. It shall not, however, apply one method for computing the tax with respect to the redemptions in 1966 of the nonqualified written notices of allocation paid in 1964 and the other method with respect to the redemption in 1966 of the nonqualified written notices of allocation paid in 1965.

TAX TREATMENT BY PATRONS OF PATRONAGE DIVIDENDS

§ 1.1385 Statutory provisions; tax treatment by patrons of patronage dividends; amounts includible in patron's gross income.

SEC. 1385. *Amounts includible in patron's gross income*—(a) *General rule.* Except as otherwise provided in subsection (b), each person shall include in gross income—

(1) The amount of any patronage dividend which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a), and

(2) Any amount, described in section 1382(c)(2)(A) (relating to certain nonpatronage distributions by tax-exempt farmers' cooperatives), which is paid in money, a qualified written notice of allocation, or other property (except a nonqualified written notice of allocation), and which is received by him during the taxable year from an organization described in section 1381(a)(1).

(b) *Exclusion from gross income.* Under regulations prescribed by the Secretary or his delegate, the amount of any patronage dividend, and any amount received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was paid as a patronage dividend, shall not be included in gross income to the extent that such amount—

(1) Is properly taken into account as an adjustment to basis of property, or

(2) Is attributable to personal, living, or family items.

(c) *Treatment of certain nonqualified written notices of allocation*—(1) *Application of subsection.* This subsection shall apply to any nonqualified written notice of allocation which—

(A) Was paid as a patronage dividend, or

(B) Was paid by an organization described in section 1381(a)(1) on a patronage basis with respect to earnings derived from business or sources described in section 1382(c)(2)(A).

(2) *Basis; amount of gain.* In the case of any nonqualified written notice of allocation to which this subsection applies, for purposes of this chapter—

(A) The basis of such written notice of allocation in the hands of the patron to whom such written notice of allocation was paid shall be zero,

(B) The basis of such written notice of allocation which was acquired from a decedent shall be its basis in the hands of the decedent, and

(C) Gain on the redemption, sale, or other disposition of such written notice of allocation by any person shall, to the extent that the stated dollar amount of such written notice of allocation exceeds its basis, be considered as gain from the sale or exchange of property which is not a capital asset.

[Sec. 1385 as added by sec. 17(a), Rev. Act 1962 (76 Stat. 1048)]

§ 1.1385–1 Amounts includible in patron's gross income.

(a) *General rules.* Section 1385(a) requires every person to include in gross income the following amounts received by him during the taxable year, to the extent paid by the organization in money, a qualified written notice of allocation, or other property (other than a nonqualified written notice of allocation):

(1) The amount of any patronage dividend received from an organization subject to the provisions of part I, subchapter T, chapter 1 of the Code, unless such amount is excludable from gross income under the provisions of section 1385(b) and paragraph (c) of this section, and

(2) The amount of any distribution received from a farmers', fruit growers', or like association, organized and operated in compliance with the requirements of section 521 and § 1.521–1, which is paid on a patronage basis with respect to earnings derived by such association either from business done with or for the United States or any of its agencies or from sources other than patronage.

The amounts described in subparagraphs (1) and (2) of this paragraph are includible in gross income for the taxable year in which they are received even though the cooperative organization was allowed a deduction for such amounts for its preceding taxable year because they were paid during the payment period for such preceding taxable year. Similarly, such amounts are includible in gross income even though the cooperative organization is not permitted any deduction for such amounts under the

provisions of section 1382 because such amounts were not paid within the time prescribed by such section.

(b) *Treatment of certain nonqualified written notices of allocation.* (1) Except as provided in paragraph (c) of this section, any gain on the redemption, sale, or other disposition of a nonqualified written notice of allocation described in subparagraph (2) of this paragraph shall, to the extent that the stated dollar amount of such written notice of allocation exceeds its basis, be considered as gain from the sale or exchange of property which is not a capital asset, whether such gain is realized by the patron who received the nonqualified written notice of allocation initially or by any subsequent holder. Any amount realized on the redemption, sale, or other disposition of such a nonqualified written notice of allocation in excess of its stated dollar amount will be treated under the applicable provisions of the Code. For example, amounts received in redemption of a nonqualified written notice of allocation which are in excess of the stated dollar amount of such written notice of allocation and which, in effect, constitute interest shall be treated by the recipient as interest.

(2) The nonqualified written notices of allocation to which subparagraph (1) of this paragraph applies are the following:

(i) A nonqualified written notice of allocation which was paid as a patronage dividend (within the meaning of section 1388(a) and paragraph (a) of § 1.1388–1), by a cooperative organization subject to the provisions of part I of subchapter T, and

(ii) A nonqualified written notice of allocation which was paid by a farmers', fruit growers', or like association, organized and operated in compliance with the requirements of section 521 and § 1.521–1, to patrons on a patronage basis with respect to earnings derived either from business done with or for the United States or any of its agencies or from sources other than patronage.

(3) The basis of any nonqualified written notice of allocation described in subparagraph (2) of this paragraph, in the hands of the patron to whom such written notice of allocation was initially paid shall be zero, and the basis of such a written notice of allocation which was acquired from a decedent shall be its basis in the hands of the decedent.

(4) The application of this paragraph may be illustrated by the following example:

Example. A, a farmer, receives a patronage dividend from the X Cooperative, in the form of a nonqualified written notice of allocation, which is attributable to the sale of his crop to that cooperative organization. The stated dollar amount of the nonqualified written notice of allocation is $100. The basis of the written notice of allocation in the hands of A is zero and he must report any amount up to $100 received by him on its redemption, sale, or other disposition, as ordinary income. If A gives the written notice of allocation to his son B, B takes A's (the donor's) basis which is zero, and any gain up to $100 which B later realizes on its redemption, sale, or other disposition is ordinary income. Similarly, if A dies before realizing any gain on the nonqualified written notice of allocation, B, his legatee, has a zero basis for such written notice of allocation and any gain up to $100 which he then realizes on its redemption, sale, or other disposition is also ordinary income. Such gain is income in respect of a decedent within the meaning of section 691(a) and § 1.691(a)–1.

(c) *Treatment of patronage dividends received with respect to certain property*—(1) *Exclusions from gross income.* Except as provided in subparagraph (2) of this paragraph, gross income shall not include—

(i) Any amount of a patronage dividend described in paragraph (a)(1) of this section which is received with respect to the purchase of supplies, equipment, or services, which were not used in the trade or business and the cost of which was not deductible under section 212, or which is received with respect to the marketing or purchasing of a capital asset (as defined in section 1221) or property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167; and

(ii) Any amount (to the extent treated as ordinary income under paragraph (b) of this section) received on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was received as a patronage dividend with respect to the purchase of supplies, equipment, or services, which were not used in the trade or business and the cost of which was not deductible under section 212, or which was received as a patronage dividend with respect to the marketing or purchasing of a capital asset (as defined in section 1221) or property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167.

(2) *Special rules.* (i) If an amount described in subparagraph (1) of this paragraph relates to the purchase of a capital asset (as defined in section 1221), or property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167, and the person receiving such amount owned such asset or property at any time during the taxable year in which such amount is received, then such amount shall be taken into account as an adjustment to the basis of such property or asset as of the first day of the taxable year in which such amount is received. To the extent that such amount exceeds the adjusted basis of such property it shall be taken into account as ordinary income.

(ii) If an amount described in subparagraph (1) of this paragraph relates to the marketing or purchasing of a capital asset (as defined in section 1221), or property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167, and the person receiving such amount did not own the asset or property at any time during the taxable year in which such amount is received, then such amount shall be included in gross income as ordinary income except that—

(*a*) If such amount relates to a capital asset (as defined in section 1221) which was held by the recipient for more than six months and with respect to which a loss was or would have been deductible under section 165, such amount shall be taken into account as gain from the sale or exchange of a capital asset held for more than six months;

(*b*) If such amount relates to a capital asset (as defined in section 1221) with respect to which a loss was not or would not have been deductible under section 165, such amount shall not be taken into account.

(iii) If an amount described in subparagraph (1) of this paragraph relates to the marketing of a capital asset (as defined in section 1221) or property used in the trade or business of a character which is subject to the allowance for depreciation provided in section 167, and such amount is received by the patron in the same taxable year during which he marketed the asset to which it relates, such amount shall be treated as an additional amount received on the sale or other disposition of such asset.

(iv) If a person receiving a patronage dividend or an amount on the redemption, sale, or other disposition of a nonqualified written notice of allocation which was received as a patronage dividend is unable to determine the item to which it relates, he shall include such patronage dividend or such amount in gross income as ordinary income in the manner and to the extent provided in paragraph (a) or (b) of this section, whichever is applicable.

(3) The application of this paragraph may be illustrated by the following examples:

Example (1). On July 1, 1964, P, a patron of a cooperative association, purchases an implement for use in his farming business from such association for $2,900. The implement has an estimated useful life of three years and has an estimated salvage value of $200 which P chooses to take into account in the computation of depreciation. P files his income tax returns on a calendar year basis. For 1964 P claims depreciation of $450 with respect to the implement pursuant to his use of the straight-line method at the rate of $900 per year. On July 1, 1965, the cooperative association pays a patronage dividend to P of $300 in cash with respect to his purchase of the farm implement. P will adjust the basis of the implement and will compute his depreciation deduction for 1965 (and subsequent taxable years) as follows:

Cost of farm implement, July 1, 1964	$2,900
Less:	
Salvage value	200
Depreciation for 1964 (6 mos.)	450
Adjustment as of Jan. 1, 1965 for cash patronage dividend	300
Total	950
Basis for depreciation for the remaining 2½ years of estimated life	1,950
Depreciation deduction for 1965 ($1,950 divided by the 2½ years of remaining life)	780

Example (2). Assume the same facts as in example (1), except that on July 1, 1965, the cooperative association paid a patronage dividend to P with respect to his purchase of the implement in the form of a nonqualified written notice of allocation having a stated dollar amount of $300. Since such written notice of allocation was not qualified, no amount of the patronage dividend was taken into account by P as an adjustment to the basis of the implement, or in computing his

depreciation deduction, for the year 1965. In 1968, P receives $300 cash from the association in full redemption of the written notice of allocation. Prior to 1968, he had recovered through depreciation $2,700 of the cost of the implement, leaving an adjusted basis of $200 (the salvage value). For the year 1968, the redemption proceeds of $300 are applied against the adjusted basis of $200, reducing the basis of the implement to zero, and the balance of the redemption proceeds, $100, is includable as ordinary income in P's gross income for the calendar year 1968. If the patronage dividend paid to P on July 1, 1965, had been in the form of $60 cash (20 percent of $300) and a qualified written notice of allocation with a stated dollar amount of $240, then the tax treatment of such patronage dividend would be that illustrated in example (1).

Example (3). Assume the same facts as in example (2), except that the nonqualified written notice of allocation is redeemed in cash on July 1, 1966. The full $300 received on redemption will reduce the adjusted basis of the implement as of January 1, 1966, and the depreciation allowances for 1966 and 1967 are computed as follows:

Cost of farm implement, July 1, 1964	$2,900
Less:	
Salvage value	200
Depreciation for 1964 (6 mos.)	450
Depreciation for 1965	900
Adjustment as of Jan. 1, 1966 for proceeds of the redemption	300
Total	1,850
Basis for depreciation on Jan. 1, 1966	1,050
If P uses the implement in his business until fully depreciated, he would be entitled to the following depreciation allowances with respect to such implement:	
For 1966	700
For 1967	350
Total	1,050
Balance to be depreciated	0

Example (4). Assume the same facts as in example (3), except that P sells the implement in 1965. The entire $300 received in 1966 in redemption of the nonqualified written notice of allocation is includible as ordinary income in P's gross income for the year 1966.

(d) *Determination of amount received.* In determining the amount received for purposes of this section—

(1) Property (other than written notices of allocation) shall be taken into account at its fair market value when received;

(2) A qualified written notice of allocation shall be taken into account at its stated dollar amount; and

(3) The amount of a qualified check shall be considered an amount received in money during the taxable year in which such check is received if the check is endorsed and cashed on or before the ninetieth day after the close of the payment period for the taxable year of the cooperative organization in which the patronage to which such amount relates occurred.

(e) *Effective date.* This section shall not apply to any distribution or allocation received from a cooperative organization, or to any gain or loss on the redemption, sale, or other disposition of any allocation received from such an organization, if such distribution or allocation was received with respect to patronage occurring in a taxable year of the organization beginning before January 1, 1963. See § 1.61-5 for the tax treatment by patrons of such distributions or allocations.

DEFINITIONS; SPECIAL RULES

§ 1.1388 Statutory provisions; definitions and special rules.

SEC. 1388. *Definitions; special rules.*—(a) *Patronage dividend.* For purposes of this subchapter, the term "patronage dividend" means an amount paid to a patron by an organization to which part I of this subchapter applies—

(1) On the basis of quantity or value of business done with or for such patron,

(2) Under an obligation of such organization to pay such amount, which obligation existed before the organization received the amount so paid, and

(3) Which is determined by reference to the net earnings of the organization from business done with or for its patrons.

Such term does not include any amount paid to a patron to the extent that (A) such amount is out of earnings other than from business done with or for patrons, or (B) such amount is out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions.

(b) *Written notice of allocation.* For purposes of this subchapter, the term "written notice of allocation" means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the recipient the stated dollar amount allocated to him by the organization and the portion thereof, if any, which constitutes a patronage dividend.

(c) *Qualified written notice of allocation*—(1) *Defined.* For purposes of this subchapter, the term "qualified written notice of allocation" means—

(A) A written notice of allocation which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of redemption at the time he receives such written notice of allocation; and

(B) A written notice of allocation which the distributee has consented, in the manner provided in paragraph (2), to take into account at its stated dollar amount as provided in section 1385(a). Such term does not include any written notice of allocation which is paid as part of a patronage dividend or as part of a payment described in section 1382(c)(2)(A), unless 20 percent or more of the amount of such patronage dividend, or such payment, is paid in money or by qualified check.

(2) *Manner of obtaining consent.* A distributee shall consent to take a written notice of allocation into account as provided in paragraph (1)(B) only by—

(A) Making such consent in writing,

(B) Obtaining or retaining membership in the organization after—

(i) Such organization has adopted (after the date of the enactment of the Revenue Act of 1962) a bylaw providing that membership in the organization constitutes such consent, and

(ii) He has received a written notification and copy of such bylaw, or

(C) If neither subparagraph (A) nor (B) applies, endorsing and cashing a qualified check, paid as a part of the patronage dividend or payment of which such written notice of allocation is also a part, on or before the 90th day after the close of the payment period for the taxable year of the organization for which such patronage dividend or payment is paid.

(3) *Period for which consent is effective*—(A) *General rule.* Except as provided in subparagraph (B)—

(i) A consent described in paragraph (2)(A) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined with the application of section 1382(e)) during the taxable year of the organization during which such consent is made and all subsequent taxable years of the organization; and

(ii) A consent described in paragraph (2)(B) shall be a consent with respect to all patronage of the distributee with the organization occurring (determined without the application of section 1382(e)) after he received the notification and copy described in paragraph (2)(B)(ii).

(B) *Revocation, etc.* (i) Any consent described in paragraph (2)(A) may be revoked (in writing) by the distributee at any time. Any such revocation shall be effective with respect to patronage occurring on or after the first day of the first taxable year of the organization beginning after the revocation is filed with such organization; except that in the case of a pooling arrangement described in section 1382(e), a revocation made by a distributee shall not be effective as to any pool with respect to which the distributee has been a patron before such revocation.

(ii) Any consent described in paragraph (2)(B) shall not be effective with respect to any patronage occurring (determined without the application of section 1382(e)) after the distributee ceases to be a member of the organization or after the bylaws of the organization cease to contain the provision described in paragraph (2)(B)(i).

(4) *Qualified check.* For purposes of this subchapter, the term "qualified check" means only a check (or other instrument which is redeemable in money) which is paid as a part of a patronage dividend, or as a part of a payment described in section 1382(c)(2)(A), to a distributee who has not given consent as provided in paragraph (2)(A) or (B) with respect to such patronage dividend or payment, and on which there is clearly imprinted a statement that the endorsement and cashing of the check (or other instrument) constitutes the consent of the payee to include in his gross income, as provided in the Federal income tax laws, the stated dollar amount of the written notice of allocation which is a part of the patronage dividend or payment of which such qualified check is also a part. Such term does not include any check (or other instrument) which is paid as part of a patronage dividend or payment which does not include a written notice of allocation (other than a written notice of allocation described in paragraph (1)(A)).

(d) *Nonqualified written notice of allocation.* For purposes of this subchapter, the term "nonqualified written notice of allocation" means a written notice of allocation which is not described in subsection (c) or a qualified check which is not cashed on or before the 90th day after the close of the payment period for the taxable year for which the distribution of which it is a part is paid.

(e) *Determination of amount paid or received.* For purposes of this subchapter, in determining amounts paid or received—

(1) Property (other than a written notice of allocation) shall be taken into account at its fair market value, and

(2) A qualified written notice of allocation shall be taken into account at its stated dollar amount.

[Sec. 1388 as added by sec. 17(a), Rev. Act 1962 (76 Stat. 1049)]

§ 1.1388–1 Definitions and special rules.

(a) *Patronage dividend*—(1) *In general.* The term "patronage dividend" means an amount paid to a patron by a cooperative organization subject to the provisions of part I, subchapter T, chapter 1 of the Code, which is paid—

(i) On the basis of quantity or value of business done with or for such patron;

(ii) Under a valid enforceable written obligation of such organization to the patron to pay such amount, which obligation existed before the cooperative organization received the amount so paid, and

(iii) Which is determined by reference to the net earnings of the cooperative organization from business done with or for its patrons.

For the purpose of subdivision (ii) of this subparagraph, amounts paid by a cooperative organization are paid under a valid enforceable written obligation if such payments are required by State law or are paid pursuant to provisions of the bylaws, articles of incorporation, or other written contract, whereby the organization is obligated to make such payment. The term "net earnings", for purposes of subdivision (iii) of this subparagraph, includes the excess of amounts retained (or assessed) by the organization to cover expenses or other items over the amount of such expenses or other items. For purposes of such subdivision (iii), net earnings shall not be reduced by any taxes imposed by subtitle A of the Code, but shall be reduced by dividends paid on capital stock or other proprietary capital interests.

(2) *Exceptions.* The term "patronage dividend" does not include the following:

(i) An amount paid to a patron by a cooperative organization to the extent that such amount is paid out of earnings not derived from business done with or for patrons.

(ii) An amount paid to a patron by a cooperative organization to the extent that such amount is paid out of earnings from business done with or for other patrons to whom no amounts are paid, or to whom smaller amounts are paid, with respect to substantially identical transactions. Thus, if a cooperative organization does not pay any patronage dividends to nonmembers, any portion of the amounts paid to members which is out of net earnings from patronage with nonmembers, and which would have been paid to the nonmembers if all patrons were treated alike, is not a patronage dividend.

(iii) An amount paid to a patron by a cooperative organization to the extent that such amount is paid in redemption of capital stock, or in redemption or satisfaction of certificates of indebtedness, revolving fund certificates, retain certificates, letters of advice, or other similar documents, even if such documents were originally paid as patronage dividends.

(iv) An amount paid to a patron by a cooperative organization to the extent that such amount is fixed without reference to the net earnings of the cooperative organization from business done with or for its patrons.

(3) *Examples.* The application of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example (1). (i) Cooperative A, a marketing association operating on a pooling basis, receives the products of patron W on January 5, 1964. On the same day cooperative A advances to W 45 cents per unit for the products so delivered and allocates to him a "retain certificate" having a face value calculated at the rate of 5 cents per unit. During the operation of the pool, and before substantially all the products in the pool are disposed of, cooperative A advances to W an additional 40 cents per unit, the amount being determined by reference to the market price of the products sold and the anticipated price of the unsold products. At the close of the pool on November 10, 1964, cooperative A determines the excess of its receipts over the sum of its expenses and its previous advances to patrons, and allocates to W an additional 3 cents per unit and shares of the capital stock of A having an aggregate stated dollar amount calculated at the rate of 2 cents per unit. Under the provisions of section 1382(e), W's patronage is deemed to occur in 1964, the year in which the pool is closed.

(ii) The patronage dividend paid to W during 1964 amounts to 5 cents per unit, consisting of the aggregate of the following per-unit allocations: The amount of the cash distribution (3 cents), and the stated dollar amount of the capital stock of A (2 cents), which are fixed with reference to the net earnings of A. The amount of the two distributions in cash (85 cents) and the face amount of the "retain certificate" (5 cents), which are fixed without reference to the net earnings of A, do not constitute patronage dividends.

Example (2). Cooperative B, a marketing association operating on a pooling basis, receives the products of patron X on March 5, 1964. On the same day cooperative B pays to X $1.00 per unit for such products, this amount being determined by reference to the market price of the product when received, and issues to him a participation certificate having no face value but which entitles X on the close of the pool to the proceeds derived from the sale of his products less the previous payment of $1.00 and the expenses and other charges attributable to such products. On March 5, 1967, cooperative B, having sold the products in the pool, having deducted the previous payments for such products, and having determined the expenses and other charges of the pool pays to X, in cash, 10 cents per unit pursuant to the participation certificate. Under the provisions of section 1382(e), X's patronage is deemed to occur in 1967, the year in which the pool is closed. The payment made to X during 1967, amounting to 10 cents per unit, is a patronage dividend. Neither the payment to X in 1964 of $1.00 nor the issuance to him of the participation certificate in that year constitutes a patronage dividend.

Example (3). Cooperative C, a purchasing association, obtains supplies for patron Y on May 1, 1964, and receives in return therefor $100. On February 1, 1965, cooperative C, having determined the excess of its receipts over its costs and expenses, pays to Y a cash distribution of $1.00 and a revolving fund certificate with a stated dollar amount of $1.00. The amount of patronage dividend paid to Y in 1965 is $2.00, the aggregate of the cash distribution ($1.00) and the stated dollar amount of the revolving fund certificate ($1.00).

Example (4). Cooperative D, a service association, sells the products of members on a fee basis. It receives the products of patron Z under an agreement not to pool his products with those of other members, to sell his products, and to deliver to him the proceeds of the sale. Patron Z makes payments to cooperative D during 1964 aggregating $75 for service rendered him by cooperative D during that year. On May 15, 1965, cooperative D, having determined the excess of its receipts over its costs and expenses, pays to Z a cash distribution of $2.00 Such amount is a patronage dividend paid by cooperative D during 1965.

(b) *Written notice of allocation.* The term "written notice of allocation" means any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice, which discloses to the patron the stated dollar amount allocated to him on the books of the cooperative organization, and the portion thereof, if any, which constitutes a patronage dividend. Thus, a mere credit to the account of a patron on the books of the organization without disclosure to the patron, is not a written notice of allocation. A written notice of allocation may disclose to the patron the amount of the allocation which constitutes a patronage dividend either as a dollar amount or as a percentage of the stated dollar amount of the written notice of allocation.

(c) *Qualified written notice of allocation*—(1) *In general.* The term "qualified written notice of allocation" means a written notice of allocation—

(i) Which meets the requirements of subparagraph (2) or (3) of this paragraph, and

(ii) Which is paid as part of a patronage dividend, or as part of a payment by a cooperative association organized and operated in compliance with the provisions of section 521 and § 1.521–1 to patrons on a patronage basis with respect to earnings derived from business done with or for the United States or any of its agencies or from sources other than patronage, that also includes a payment in money or by qualified check equal to at least 20 percent of such patronage dividend or such payment.

In determining, for purposes of subdivision (ii) of this subparagraph, whether 20 percent of a patronage dividend or a payment with respect to nonpatronage earnings is paid in money or by qualified check, any portion of such dividend or payment which is paid in nonqualified written notices of allocation may be disregarded. Thus, if a cooperative pays a patronage dividend of $100 in the form of a nonqualified written notice of allocation with a stated dollar amount of $50, a written notice of allocation with a stated dollar amount of $40, and money in the amount of $10, the written notice of allocation with a stated dollar amount of $40 will constitute a qualified written notice of allocation if it meets the requirements of subparagraph (2) or (3) of this paragraph. A "payment in money", as that term is used in subdivision (ii) of this subparagraph, includes a payment by a check drawn on a bank but does not include a credit against amounts owed by the patron to the cooperative organization, a credit against the purchase price of a share of stock or of a membership in such organization, nor does it include a payment by means of a document redeemable by such organization for money.

(2) *Written notice of allocation redeemable in cash.* The term "qualified written notice of allocation" includes a written notice of allocation which meets the requirement of subparagraph (1)(ii) of this paragraph and which may be redeemed in cash at its stated dollar amount at any time within a period beginning on the date such written notice of allocation is paid and ending not earlier than 90 days from such date, but only if the distributee receives written notice of the right of redemption at the time he receives such written notice of allocation. The written notice of the right of redemption referred to in the preceding sentence shall be given separately to each patron. Thus, a written notice of the right of redemption which is published in a newspaper or posted at the cooperative's place of business would not be sufficient to qualify a written notice of allocation which is otherwise described in this subparagraph.

(3) *Consent of patron.* The term "qualified written notice of allocation" also includes a written notice of allocation which meets the requirement of subparagraph (1)(ii) of this paragraph and which the distributee has consented, in a manner provided in this subparagraph, to take into account at its stated dollar amount as provided in section 1385 and § 1.1385–1.

(i) *Consent in writing.* A distributee may consent to take the stated dollar amount of written notices of allocation into account under section 1385 by signing and furnishing a written consent to the cooperative organization. No special form is required for the written consent so long as the document on which it is made clearly discloses the terms of the consent. Thus, the written consent may be made on a signed invoice, sales slip, delivery ticket, marketing agreement, or other document, on which appears the appropriate consent. Unless the written consent specifically provides to the contrary, it shall be effective with respect to all patronage occurring during the taxable year of the cooperative organization in which such consent is received by such organization and, unless revoked under section 1388(c)(3)(B), for all subsequent taxable years. Section 1388(c)(3)(B)(i) provides that a written consent may be revoked by the patron at any time. Thus, any written consent which is, by its terms, irrevocable is not a consent that would qualify a written notice of allocation. A revocation, to be effective, must be in writing, signed by the patron, and furnished to the cooperative organization. Such a revocation shall be effective only with respect to patronage occurring after the close of the taxable year of the cooperative organization during which the revocation is filed with it. In the case of a pooling arrangement described in section 1382(e) and § 1.1382–5, a written consent which is made at any time before the close of the taxable year of the cooperative organization during which the pool closes shall be effective with respect to all patronage under that pool. In addition, any subsequent revocation of such consent by the patron will not be effective for that pool or any other pool with respect to which he has been a patron before such revocation.

(ii) *Consent by membership.* (*a*) A distributee may consent to take the stated dollar amount of written notices of allocation into account under section 1385 by obtaining or retaining membership in the cooperative organization after such organization has adopted a valid bylaw providing that membership in such cooperative organization constitutes such consent, but such consent shall take effect only after the distributee has received a written notification of the adoption of the bylaw provision and a copy of such bylaw. The bylaw must have been adopted by the cooperative organization after October 16, 1962, and must contain a clear statement that membership in the cooperative organization constitutes the prescribed consent. The written notification from the cooperative organization must inform the patron that this bylaw has been adopted and of its significance. The notification and copy of the bylaw shall be given separately to each member (or prospective member); thus, a written notice and copy of the bylaw which are published in a newspaper or posted at the cooperative's place of business are not sufficient to qualify a written notice of allocation under this subdivision. A member (or prospective member) is presumed to have received the notification and copy of the bylaw if they were sent to his last known address by ordinary mail. A prospective member must receive the notification and copy of the bylaw before he becomes a member of the organization in order to have his membership in the organization constitute consent. A consent made in the manner described in this subdivision shall be effective only with respect to patronage occurring after the patron has received a copy of the bylaw and the prerequisite notice and while he is a member of the organization. Thus, any such consent shall not be effective with respect to any patronage occurring after the patron ceases to be a member of the cooperative organization or after the bylaw provision is repealed by such organization. In the case of a pooling arrangement described in section 1382(e) and §1.1382–5, a consent made under this subdivision will be effective only with respect to the patron's actual patronage occurring after he receives the notification and copy of the bylaw and while he is a member of the cooperative organization. Thus such a consent shall not be effective with respect to any patronage under a pool after the patron ceases to be a member of the cooperative organization or after the bylaw provision is repealed by the organization.

(*b*) The following is an example of a bylaw provision which would meet the requirements prescribed in (*a*) of this subdivision.

Example. Each person who hereafter applies for and is accepted to membership in this cooperative and each member of this cooperative on the effective date of this bylaw who continues as a member after such date shall, by such act alone, consent that the amount of any distributions with respect to his patronage occurring after ----------, which are made in written notices of allocation (as defined in 26 U.S.C. 1388) and which are received by him from the cooperative, will be taken into account by him at their stated dollar amounts in the manner provided in 26 U.S.C. 1385(a) in the taxable year in which such written notices of allocation are received by him.

(*c*) For purposes of this subdivision the term "member" means a person who is entitled to participate in the management of the cooperative organization.

(iii) *Consent by qualified check.* (*a*) A distributee may consent to take the stated dollar amount of a written notice of allocation into account under section 1385 by endorsing and cashing a qualified check which is paid as a part of the same patronage dividend or payment described in subparagraph (1)(ii) of this paragraph of which the written notice of allocation is also a part. In order to constitute an effective consent under this subdivision, however, the qualified check must be endorsed and cashed by the payee on or before the ninetieth day after the close of the payment period for the taxable year of the cooperative organization with respect to which the patronage dividend or payment is paid (or on or before such earlier day as may be prescribed by the cooperative organization). The endorsing and cashing of a qualified check shall be considered a consent only with respect to written notices of allocation which are part of the same patronage dividend or payment as the qualified check and for which a consent under subdivision (i) or (ii) of this subparagraph is not in effect. A qualified check is presumed to be endorsed and cashed within the 90-day period if the earliest bank endorsement which appears thereon bears a date no later than 3 days after the end of such 90-day period (excluding Saturdays, Sundays, and legal holidays).

(*b*) The term "qualified check" means a check, or other instrument redeemable in money, which is paid as a part of a patronage dividend or payment described in subparagraph (1)(ii) of this paragraph, on which there is clearly imprinted a statement that the endorsement and cashing of the check or other instrument constitutes the consent of the payee to take into account, as provided in the Federal income tax laws, the stated dollar amount of any written notices of allocation which are paid as a part of the patronage dividend or payment of which such check or other instrument is also a part. A qualified check need not be in the form of an ordinary check which is payable through the banking system. It may, for example, be in the form of an instrument which is redeemable in money by the cooperative organization. The term "qualified check" does not include a check or other instrument paid as part of a patronage dividend or payment with respect to which a consent under subdivision (i) or (ii) of this subparagraph is in effect. In addition, the term "qualified check" does not include a check or other instrument which is paid as part

of a patronage dividend or payment, if such patronage dividend or payment does not also include a written notice of allocation (other than a written notice of allocation that may be redeemed in cash at its stated dollar amount which meets the requirements of section 1388(c)(1)(A) and subparagraph (2) of this paragraph). Thus, a check which is paid as part of a patronage dividend is not a qualified check (even though it has the required statement imprinted on it) if the remaining portion of such patronage dividend is paid in cash or if the only written notices of allocation included in the payment are qualified under section 1388(c)(1)(A) and subparagraph (2) of this paragraph (relating to certain written notices of allocation which are redeemable by the patron within a period of at least 90 days).

(c) The provisions of this subdivision may be illustrated by the following example:

Example. (1) The A Cooperative is a cooperative organization filing its income tax returns on a calendar year basis. None of its patrons have consented in the manner prescribed in section 1388(c)(2)(A) or (B). On August 1, 1964, the A Cooperative pays patronage dividends to its patrons with respect to their 1963 patronage, and the payment to each such patron is partly by a qualified check and partly in the form of a written notice of allocation which is not redeemable for cash. Each patron who endorses and cashes his qualified check on or before December 14, 1964 (the ninetieth day following the close of the 1963 payment period) shall be considered to have consented with respect to the accompanying written notice of allocation and the amount of such check is treated as a patronage dividend paid in money on August 1, 1964.

(2) As to any patron who has not endorsed and cashed his qualified check by December 14, 1964, there is no consent and both the written notice of allocation and the qualified check constitute nonqualified written notices of allocation within the meaning of section 1388 (d) and paragraph (d) of this section. If such a patron then cashes his check on January 2, 1965, he shall treat the amount received as an amount received on January 2, 1965, in redemption of a nonqualified written notice of allocation. Likewise, the cooperative shall treat the amount of the check as an amount paid on January 2, 1965, in redemption of a nonqualified written notice of allocation.

(d) *Nonqualified written notice of allocation.* The term "nonqualified written notice of allocation" means a written notice of allocation which is not a qualified written notice of allocation described in section 1388 (c) and paragraph (c) of this section, or a qualified check which is not cashed on or before the ninetieth day after the close of the payment period for the taxable year of the cooperative organization for which the payment of which it is a part is paid.

(e) *Patron.* The term "patron" includes any person with whom or for whom the cooperative association does business on a cooperative basis, whether a member or a nonmember of the cooperative association, and whether an individual, a trust, estate, partnership, company, corporation, or cooperative association.

PAR. 2. Section 1.61–5 is amended by adding the following new paragraph:

§ 1.61–5 Allocations by cooperative associations; tax treatment as to patrons.

* * * * *

(d) *Effective date.* This section shall not apply to any amount the tax treatment of which is prescribed in section 1385 and § 1.1385–1.

PAR. 3. Section 1.521 is amended by revising subsection (a) of section 521 and by adding a historical note. The amended and added provisions read as follows:

§ 1.521 Statutory provisions; exemption of farmers' cooperatives from tax.

SEC. 521. *Exemption of farmers' cooperatives from tax*—(a) *Exemption from tax.* A farmers' cooperative organization described in subsection (b)(1) shall be exempt from taxation under this subtitle except as otherwise provided in part I of subchapter T (sec. 1381 and following). Notwithstanding part I of subchapter T (sec. 1381 and following), such an organization shall be considered an organization exempt from income taxes for purposes of any law which refers to organizations exempt from income taxes.

* * * * *

[Sec. 521 as amended by sec. 17(b)(1), Rev. Act 1962 (76 Stat. 1051)]

PAR. 4. Section 1.521–1 is amended by revising paragraph (a)(1) and adding a new paragraph (f). The amended and added provisions read as follows:

§ 1.521–1 Farmers' cooperative marketing and purchasing associations; requirements for exemption under section 521.

(a)(1) Cooperative associations engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc., and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt from income tax except as otherwise provided in section 522, or part I, subchapter T chapter 1 of the Code, and the regulations thereunder. For instance, cooperative dairy companies which are engaged in collecting milk and disposing of it or the products thereof and distributing the proceeds, less necessary operating expenses, among the producers upon the basis of either the quantity or the value of milk or of butterfat in the milk furnished by such producers, are exempt from the tax. If the proceeds of the business are distributed in any other way than on such a proportionate basis, the association does not meet the requirements of the Code and is not exempt. In other words, nonmember patrons must be treated the same as members insofar as the distribution of patronage dividends is concerned. Thus, if products are marketed for nonmember producers, the proceeds of the sale, less necessary operating expenses, must be returned to the patrons from the sale of whose goods such proceeds result, whether or not such patrons are members of the association. In order to show its cooperative nature and to establish compliance with the requirement of the Code that the proceeds of sales, less necessary expenses, be turned back to all producers on the basis of either the quantity or the value of the products furnished by them, it is necessary for such an association to keep permanent records of the business done both with members and nonmembers. The Code does not require, however, that the association keep ledger accounts with each producer selling through the association. Any permanent records which show that the association was operating during the taxable year on a cooperative basis in the distribution of patronage dividends to all producers will suffice. While under the Code patronage dividends must be paid to all producers on the same basis, this requirement is complied with if an association instead of paying patronage dividends to nonmember producers in cash, keeps permanent records from which the proportionate shares of the patronage dividends due to nonmember producers can be determined, and such shares are made applicable toward the purchase price of a share of stock or of a membership in the association. See, however, paragraph (c)(1) of § 1.1388–1 for the meaning of "payment in money" for purposes of qualifying a written notice of allocation.

* * * * *

(f) A cooperative association will not be denied exemption merely because it makes payments solely in nonqualified written notices of allocation to those patrons who do not consent as provided in section 1388 and § 1.1388–1, but makes payments of 20 percent in cash and the remainder in qualified written notices of allocation to those patrons who do so consent. Nor will such an association be denied exemption merely because, in the case of patrons who have so consented, payments of less than $5 are made solely in nonqualified written notices of allocation while payments of $5 or more are made in the form of 20 percent in cash and the remainder in qualified written notices of allocation. In addition, a cooperative association will not be denied exemption if it pays a smaller amount of interest or dividends on nonqualified written notices of allocation held by persons who have not consented as provided in section 1388 and § 1.1388–1 than it pays on qualified written notices of allocation held by persons who have so consented, provided that the amount of the interest or dividend reduction is reasonable in relation to the fact that the association receives no tax benefit with respect to such nonqualified written notices of allocation until redeemed. However, such an association will be denied exemption if it otherwise treats patrons who have not consented differently from patrons who have consented, either with regard to the original payment or allocation or with regard to the redemption of written notices of allocation. For example, if such an association pays patronage dividends in the form of written notices of allocation accompanied by qualified checks, and provides that any patron who does not cash his check within a specified time will forfeit the portion of

the patronage dividend represented by such check, then the cooperative association will be denied exemption under this section as it does not treat all patrons alike.

PAR. 5. Section 1.522 is amended by adding a historical note at the end thereof. The historical note reads as follows:

§ 1.522 Statutory provisions; tax on farmers' cooperatives.

* * * * *

[Sec. 522 repealed by sec. 17(b)(2), Rev. Act 1962 (76 Stat. 1051)]

PAR. 6. The following new section is inserted after § 1.522–3:

§ 1.522–4 Taxable years affected.

Section 522 and §§ 1.522–1, 1.522–2, and 1.522–3, are applicable to taxable years beginning before January 1, 1963, and also to amounts paid during taxable years beginning after December 31, 1962, the tax treatment of which is not prescribed in section 1382 and the regulations thereunder.

PAR. 7. Paragraph (f) of § 1.6012–2 is amended to read as follows:

§ 1.6012–2 Corporations required to make returns of income.

* * * * *

(f) *Farmers' cooperatives.* Farmers' cooperative organizations described in section 521 are required to make a return of income whether or not such organizations are subject to the taxes imposed by sections 11 and 1201 as prescribed in section 522 or 1381. The return shall be made on Form 990–C.

PAR. 8. Section 1.6072 is amended by revising subsection (d) of section 6072 and by adding a historical note. These amended and added provisions read as follows:

§ 1.6072 Statutory provisions; time for filing income tax returns.

SEC. 6072. *Time for filing income tax returns.* * * *

(d) *Returns of cooperative associations.* In the case of an income tax return of—

(1) An exempt cooperative association described in section 1381(a)(1), or

(2) An organization described in section 1381(a)(2) which is under an obligation to pay patronage dividends (as defined in section 1388(a)) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings,

a return made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year, and a return made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year.

* * * * *

[Sec. 6072 as amended by sec. 17(b)(3), Rev. Act 1962 (76 Stat. 1051)]

PAR. 9. Paragraph (d) of § 1.6072–2 is amended to read as follows:

§ 1.6072–2 Time for filing returns of corporations.

* * * * *

(d) *Cooperative organizations.* The income tax return of the following cooperative organizations shall be filed on or before the fifteenth day of the ninth month following the close of the taxable year:

(1) A farmers', fruit growers', or like association, organized and operated in compliance with the requirements of section 521 and § 1.521–1; and

(2) For a taxable year beginning after December 31, 1962, a corporation described in section 1381(a)(2), which is under a valid enforceable written obligation to pay patronage dividends (as defined in section 1388(a) and paragraph (a) of § 1.388–1) in an amount equal to at least 50 percent of its net earnings from business done with or for its patrons, or which paid patronage dividends in such an amount out of the net earnings from business done with or for patrons during the most recent taxable year for which it had such net earnings. Net earnings for this purpose shall not be reduced by any taxes imposed by subtitle A of the Code and shall not be reduced by dividends paid on capital stock or other proprietary interest.

[F.R. Doc. 63–3410; Filed, Apr. 1, 1963; 8:51 a.m.]

[T.D. 6645]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PART 301—PROCEDURE AND ADMINISTRATION

Submission of Additional Information by Certain Exempt Organizations and to Provide for Fuller and More Convenient Disclosure of Information to the Public

On December 29, 1962, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) and Regulations on Procedure and Administration (26 CFR Part 301) under sections 6033 and 6104, respectively, of the Internal Revenue Code of 1954 (relating to submission of additional information by certain exempt organizations and provision for fuller and more convenient disclosure of information to the public) was published in the FEDERAL REGISTER (27 F.R. 12953). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

Paragraph (a)(4) of § 1.6033–1, as set forth in paragraph 1 of the notice of proposed rule making, is changed by revising subdivisions (iii), (vi), and the final sentence of paragraph (a)(4).

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

Approved: March 28, 1963.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

PARAGRAPH 1. Paragraph (a)(4) of § 1.6033–1 is amended to read as follows:

§ 1.6033–1 Returns by exempt organizations.

(a) *In general.* * * *

(4) Every organization described in section 501(c)(3), which is exempt from taxation under section 501(a), and which is required to file a return under section 6033 and this section, shall file its annual return on Form 990–A, which return shall consist of Part I and Part II. Part I shall contain, in addition to information required in Part II, such information as may be prescribed in the return and instructions which is required to be furnished by section 6033(a) or which is necessary to show whether or not such organization is exempt from tax under section 501(a). Part II, which shall be open to public inspection pursuant to section 6104 and other applicable sections and the regulations thereunder, shall contain principally the information required by section 6033(b) and the regulations thereunder. The information to be contained in Part II, which shall be furnished in duplicate in the manner prescribed in the instructions issued with respect to the return, is as follows:

(i) Its gross income for the year. For this purpose, gross income includes tax-exempt income, but does not include contributions, gifts, grants, etc., received. Whether or not an item constitutes a contribution, gift, grant, etc., depends upon all the surrounding facts and circumstances.

(ii) Its expenses attributable to such income and incurred within the year.

(iii) Its disbursements out of income (including prior years' accumulations) made within the year for the purposes for which it is exempt. Information shall be included as to the class of activity with a separate total for each activity as well as the name, address, and amount received by each individual or organization receiving cash, other property, or services within the taxable year. If the donee is related by blood, marriage, adoption, or employment (including children of employees) to any person or corporation having an interest in the exempt organization, such as a creator, donor, director, trustee, or officer, the relationship of the donee shall be stated. Activities shall be classified according to purpose in greater detail than merely charitable, educational, religious, or scientific. For example, payments for nursing service, for laboratory construction, for fellowships, or for assistance to indigent families shall be so identified. Where the fair market value of the property at the time of disbursement is used as the measure of the disbursement, the book value of such property (and a statement of how book value was determined) shall also be furnished, and any difference between the fair market value at the time of disbursement and the book value should be reflected in the books of account. The expenses allocable to making the disbursements shall be set forth in such detail as is prescribed by the form or instructions.

(iv) Its accumulation of income within the year. The amount of such accu-

mulation is obtained by subtracting from the amount in subdivision (i) of this subparagraph the sum of the amounts determined in subdivisions (ii) and (iii) of this subparagraph and the expenses allocable to carrying out the purposes for which it is exempt.

(v) Its aggregate accumulation of income at the beginning and end of the year. The aggregate accumulation of income shall be divided between that which is attributable to the gain or loss on the sale of assets (excluding inventory items) and that which is attributable to all other income. For this purpose expenses and disbursements shall be allocated on the basis of accounting records, the governing instrument, or applicable local law.

(vi) Its disbursements out of principal in the current and prior years for the purposes for which it is exempt. With respect to disbursements made in the current year there shall be included information as to the class of activity with a separate total for each activity as well as the name, address, and amount received by each individual or organization receiving cash, other property, or services within the taxable year. If the donee is related by blood, marriage, adoption, or employment (including children of employees) to any person or corporation having an interest in the exempt organization, such as a creator, donor, director, trustee, or officer, the relationship of the donee shall be stated. Activities shall be classified according to purpose in greater detail than merely charitable, educational, religious, or scientific. For example, payments for nursing service, for laboratory construction, for fellowships, or for assistance to indigent families shall be so identified. Where the fair market value of the property at the time of disbursement is used as the measure of the disbursement, the book value of such property (and a statement of how book value was determined) shall also be furnished, and any difference between the fair market value at the time of disbursement and the book value should be reflected in the books of account. The expenses allocable to making the disbursements shall be set forth in such detail as is prescribed by the form or instructions.

(vii) A balance sheet showing its assets, liabilities, and net worth as of the beginning and end of such year. Detailed information on the assets, liabilities, and net worth shall be furnished on the schedule provided for this purpose on the Form 990–A. Such schedule shall be supplemented by attachments where appropriate.

(viii) The total of the contributions and gifts received by it during the year. A statement shall be included showing the gross amount of contributions and gifts collected by the organization, the expenses incurred by the organization in collecting such amount, and the net proceeds.

(ix) In addition to the information required in subdivisions (i) through (viii) of this subparagraph, the organization shall furnish such specific information and answer such specific questions as are required by the form or instructions.

Any organization which filed a Form 990–A (revised October 1960, or earlier) for a taxable year ending before December 31, 1962, on or before the time specified (including extensions thereof) for filing such return, shall not be required to file the Form 990–A prescribed in this subparagraph for such taxable year.

* * * * *

PAR. 2. Paragraph (a) of § 301.6104–2 is amended to read as follows:

§ 301.6104–2 Publicity of information on certain information returns.

(a) *In general.* The following information, together with the name and address of the organization or trust furnishing such information, shall be a matter of public record:

(1) The information furnished on Part II of Form 990–A.

(2) The information furnished pursuant to section 6034 (relating to annual information required of trusts claiming a charitable deduction under section 642 (c)) on Form 1041–A.

Such information may be used by the Commissioner for the purpose of making and publishing statistical or other studies.

(b) *Place of inspection.* Information furnished on the public portion of returns for years ending prior to December 31, 1962, shall be available to any person during the regular hours of business in the office of the district director with whom the Form 990–A or 1041–A was required to be filed; and information furnished on the public portion of returns for taxable years ending on or after December 31, 1962, shall be available to any person in the Office of the Director, Public Information Division, Internal Revenue Service, Washington 25, D.C., as well as in the office of the district director with whom the forms were required to be filed.

(c) *Procedure for public inspection of Forms 990–A and 1041–A*—(1) *Requests for inspection.* Forms 990–A and 1041–A shall be available for public inspection only upon request. If inspection at the National Office is desired, the request shall be made in writing to the Commissioner of Internal Revenue, Attention: Director, Public Information Division, Washington 25, D.C. Requests for inspection in the office of a district director shall be made in writing to the appropriate district director. All requests for inspection must include the name and address of the organization which filed the return, the type of return, and the taxable year for which filed.

(2) *Time and extent of inspection.* A person requesting public inspection in the manner specified in subparagraph (1) of this paragraph shall be notified by the Internal Revenue Service when the material he desires to inspect will be made available for his inspection. Forms 990–A and 1041–A will be made available for public inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from inspecting them. In addition, the Commissioner or district director may limit the number of returns to be made available to any person for inspection on a given date. Inspection will be allowed only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Copies.* Notes may be taken of the material opened for inspection under this section. Copies may be made manually or photographically in the National Office subject to reasonable supervision by the Public Information Division with regard to the facilities and equipment to be employed; and copies may be made manually but not photographically in the offices of the district directors. Copies of the material opened for inspection will be furnished by the Internal Revenue Service to any person making request therefor. Requests for such copies shall be made in the same manner as requests for inspection (see subparagraph (1) of this paragraph) to the office of the Internal Revenue Service in which such material is available for inspection as provided in paragraph (b) of this section. If made at the time of inspection, the request for copies need not be in writing. Any copies furnished will be certified upon request. The Commissioner may prescribe a reasonable fee for furnishing copies of returns pursuant to this section.

[F.R. Doc. 63–3411; Filed, Apr. 1, 1963; 8:51 a.m.]

[T.D. 6644]

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Miscellaneous Amendments

On February 1, 1963, a notice of proposed rule making to amend 26 CFR Part 251 was published in the FEDERAL REGISTER (28 F.R. 977). In accordance with the notice, interested persons were afforded an opportunity to submit written comments or suggestions pertaining thereto. No comments or suggestions were received within the 30-day period prescribed in the notice, and the amendments as published in the FEDERAL REGISTER are hereby adopted.

This Treasury decision shall be effective on the first day of the first month which begins not less than 30 days after date of its publication in the FEDERAL REGISTER.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] BERTRAND M. HARDING,
Acting Commissioner of Internal Revenue.
PHILIP NICHOLS, Jr.,
Commissioner of Customs.

Approved: March 28, 1963.

STANLEY S. SURREY,
Assistant Secretary of the Treasury.

In order: (1) To eliminate specific sizes for barrels and kegs of imported beer and to require that tax be computed on the quantity actually imported; (2) to provide currently required definitions; (3) to specify that containers of imported distilled spirits of 1 gallon or less must conform to the requirements of the Federal Alcohol Administration Act and regulations; and (4) to make various technical and editorial changes, the regulations in 26 CFR Part 251 are amended as follows:

PARAGRAPH 1. Subpart B is revised to provide, in a modern format, definitions currently required. As revised, Subpart B reads as follows:

Subpart B—Definitions

§ 251.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not enumerated which are in the same general class.

Assistant regional commissioner. An assistant regional commissioner (alcohol and tobacco tax) who is responsible to, and functions under the direction and supervision of, a regional commissioner of internal revenue.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which operations relating to the production, storage, denaturation, or bottling of spirits prior to payment or determination of tax are authorized to be conducted.

CFR. The Code of Federal Regulations.

Class 8 Customs bonded warehouse. A class 8 customs bonded warehouse established under the provisions of Customs Regulations (19 CFR Ch. I).

Collector of customs. The person having charge of a customs collection district, the assistant collector of customs, deputy collector of customs, and any person authorized by law or by regulations approved by the Secretary of the Treasury to perform the duties of a collector of customs.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector of customs, to perform the duties of an officer of the Customs Service.

Director. The Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, and all mixtures or dilutions thereof, from whatever source or by whatever process produced, including alcohol, whisky, brandy, gin, rum, and vodka, but not including wine as defined in this subpart.

Distilled spirits plant. An establishment qualified under the provisions of Part 201 of this chapter for the production, bonded storage, or bottling of spirits, or for rectification, or for any combination of such operations.

District director. A district director of internal revenue.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Importer. Any person who imports distilled spirits, wines, or beer into the United States.

Internal revenue officer. An officer or employee of the Internal Revenue Service duly authorized to perform any function relating to the administration or enforcement of this subchapter.

I.R.C. The Internal Revenue Code of 1954, as amended.

Person. An individual, a trust, an estate, a partnership, an association, a company, or a corporation.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Red strip stamps. The stamps prescribed under authority of section 5205 (a) (2), I.R.C.

Region. An internal revenue region.

United States. "United States" includes only the States and the District of Columbia.

U.S.C. The United States Code.

Wine. (a) Still wine, including vermouth or other aperitif wine, artificial or imitation wines or compounds sold as still wine, champagne or sparkling wine, and artificially carbonated wine, and (b) flavored or sweetened fortified or unfortified wines, by whatever name sold or offered for sale, containing not over 24 percent alcohol by volume.

PAR. 2. Section 251.42 is amended by deleting the definition of a wine gallon, as that definition is provided in Subpart B; by making minor editorial changes; and by revising the statutory citations at the end thereof. As amended, § 251.42 reads as follows:

§ 251.42 Wines.

All wines (including imitation, substandard, or artificial wine, and compounds sold as wine) having not in excess of 24 percent of alcohol by volume, in customs bonded warehouse or imported into the United States are subject to an internal revenue tax at the rates prescribed by law; such tax to be determined at the time of removal from customs custody for consumption or sale. The tax is imposed on each wine gallon and at a like rate on fractional parts of a wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon. All wines containing more than 24 percent of alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.

(72 Stat. 1331, as amended; 26 U.S.C. 5041)

PAR. 3. Section 251.45 is amended to delete the reference to the requirements of § 251.46. As amended, § 251.45 reads as follows:

§ 251.45 Rate of tax.

A tax is imposed by section 5051, I.R.C., on all beer imported into the United States, at the rate prescribed in such section, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for fractional parts of a barrel. The tax on beer shall be determined at the time of importation, or, if entered into customs custody, at the time of removal from such custody.

(72 Stat. 1333, 1334, as amended; 26 U.S.C. 5051, 5054)

PAR. 4. Section 251.46 is amended to delete all provisions regarding barrel and keg sizes and tolerances, and to require tax computation on the actual quantity imported. As amended, § 251.46 reads as follows:

§ 251.46 Computation of tax.

The tax on imported beer shall be computed on the basis of the actual quantity in a container, at the rate prescribed by law.

(72 Stat. 1333, as amended; 26 U.S.C. 5051)

PAR. 5. The center heading immediately preceding § 251.56 is amended to read as follows:

PACKAGING, MARKING, AND STAMPING OF DISTILLED SPIRITS

PAR. 6. Section 251.56 is amended to include the requirement (deleted from Subpart B) that certain containers must conform to 26 CFR Part 175, and to specify that containers of 1 gallon or less of distilled spirits must conform to 27 CFR Part 5. As amended, § 251.56 reads as follows:

§ 251.56 Containers of 1 gallon or less.

Imported containers of distilled spirits of 1 gallon or less, and empty containers imported for the bottling of imported distilled spirits of 1 gallon or less, are required to be marked in accordance with Customs Regulations (19 CFR Parts 11, 12). Containers of 1 gallon or less of distilled spirits must conform to the requirements of 27 CFR Part 5, and be stamped in accordance with this part. Also, distilled spirits containers of a capacity of one-half pint to 1 gallon, inclusive, must conform to the requirements of 26 CFR Part 175.

[F.R. Doc. 63-3407; Filed, Apr. 1, 1963; 8:50 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 7—SPECIAL REGULATIONS RELATING TO PARKS AND MONUMENTS

Sequoia and Kings Canyon National Parks, California; Water Supplies and Sewage Disposal on Privately Owned Lands

On page 1156 of the FEDERAL REGISTER of February 6, 1963, there was published a notice and text of a proposed amendment to § 7.8 of Title 36, Code of Federal Regulations. The purpose of this amendment is to establish regulations governing water supplies and sewage disposal on privately owned lands in Sequoia and Kings Canyon National Parks.

Interested persons were given 30 days within which to submit written comments, suggestions or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received, and the proposed amendment is hereby adopted without change and is set forth below. This amendment shall become effective at the beginning of the 30th calendar day following the date of this publication in the FEDERAL REGISTER.

Section 7.8 is amended by addition of new paragraph (h) to read as follows:

§ 7.8 Sequoia and Kings Canyon National Parks.

* * * * *

(h) *Privately owned lands*—(1) *State and county health and sanitation laws and regulations.* Owners of privately owned lands and occupants of private lands (including business establishments) in those portions of Sequoia and Kings Canyon National Parks over which jurisdiction has been ceded by the State of California to the United States of America, shall conform to the standards concerning water supplies and sewage disposal systems established from time to time by or pursuant to the laws of the State of California or the ordinances of the counties of Fresno and Tulare which would apply to such lands if the owners and occupants of such lands were not situated in Sequoia and Kings Canyon National Parks, and any other standards that may be promulgated by the Secretary of the Department of the Interior. Personnel of the parks and the State and County officials will cooperate in the administration of this regulation. Although water supply and sewage disposal standards established from time to time by or pursuant to the laws of the State of California and the ordinances of the counties of Fresno and Tulare shall apply, such owners and occupants of privately owned lands (including business establishments), shall not be required to obtain permits or licenses from the State of California or its political subdivisions, but shall submit plans for water supplies and sewage disposal system construction or alterations to the Superintendent, Sequoia and Kings Canyon National Parks, for approval.

(2) *Conflict with Federal laws.* If the standards published from time to time by or pursuant to the laws of the State of California and the ordinances of the counties of Fresno and Tulare, specified in subparagraph (1) of this paragraph, are lower than or conflict with any promulgated pursuant to Federal laws or regulations applicable to privately owned lands within Sequoia and Kings Canyon National Parks, the latter shall prevail.

(60 Stat. 238; 5 U.S.C. 1003; 39 Stat. 535; 16 U.S.C. 3)

JOHN M. DAVIS,
Superintendent, Sequoia and Kings Canyon National Parks.

[F.R. Doc. 63-3377; Filed, Apr. 1, 1963; 8:47 a.m.]

PART 7—SPECIAL REGULATIONS RELATING TO PARKS AND MONUMENTS

Olympic National Park, Washington; Fishing

On page 1156 of the FEDERAL REGISTER of February 6, 1963, there was published a notice and text of a proposed amendment to § 7.28 of Title 36, Code of Federal Regulations. The purpose of the amendment is to bring into conformity the regulations for fishing in Park waters with those for the State of Washington for the same and similar waters adjacent to the Park.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received, and the proposed amendment is hereby adopted without change and is set forth below. This amendment shall become effective at the beginning of the 30th calendar day following the date of this publication in the FEDERAL REGISTER.

Paragraph (a) of § 7.28 is amended to read as follows:

§ 7.28 Olympic National Park.

(a) *Fishing*—(1) *Open season, size, catch, and possession limit.* The opening and closing dates of the fishing seasons for fishing in Park waters and the size, catch, and possession limits shall conform to those of the State of Washington for streams and lakes for the adjoining counties of Clallam, Jefferson, Mason and Grays Harbor. The catch and possession limits are to include fish caught in both Park and State waters.

(i) During the winter fishing seasons, only the following streams or portions thereof are open to whitefish, steelhead and other trout fishing:

Bogachiel River.
Dosewallips River below falls east of Dosewallips Campground.
Hoh River, including the South Fork.
Ozette River.
Queets River below Tshletshy Creek.
Quillayute River.
Quinault River below Graves Creek, including the North Fork below Wolf Bar Shelter.
Soleduck River below the North Fork.

All other streams passing through the Pacific Coast Area in which the State of Washington permits whitefish, steelhead, and other trout fishing in adjoining waters.

(ii) Whenever the State of Washington, under its regulations, has designated as being open year-round for salmon fishing those portions of the Hoh River, Queets River, Quillayute River and Quinault River, which flow outside the park, year-round salmon fishing shall be permitted on the following park waters, exclusive of tributaries:

Hoh River below the South Fork.
Queets River below Tshletshy Creek.
Quillayute River.
Quinault River below the bridge connecting the North Fork and Graves Creek Roads.

(2) *Closed waters.* (i) All that portion of Morse Creek watershed within the park except Lake Angeles and P. J. Lake is closed to fishing.

(ii) That section of Kalaloch Creek, utilized as a domestic water supply, which is posted as closed to fishing.

(3) *Size limit.* Where the State of Washington has designated a minimum size limit in those portions of the following designated streams which flow outside the park, the same minimum size limit shall apply in the following park waters, exclusive of tributaries:

Bogachiel River below the North Fork.
Dosewallips River below the falls east of Dosewallips Campground.
Hoh River–below Mt. Tom Creek.
Queets River below Tshletshy Creek.
Quillayute River.
Quinault River below Graves Creek, including the North Fork below Wolf Bar Shelter.
Soleduck River below the North Fork.

(i) All fish caught under a legal minimum size limit or over a maximum legal size limit shall be carefully handled, released, and returned at once to the water.

(4) *Bait.* Fishing with any line, gear, or tackle having more than two spinners, spoons, blades, flashers or like attractions, and with more than one rudder, and more than three hooks attached to such line, gear, or tackle is prohibited.

(i) The use of fish eggs as bait is permitted.

(5) *Pollution of waters.* The cleaning of fish in Park waters or the depositing of fish entrails, heads, gills, or other refuse in Park waters is prohibited.

(6) *License.* A license to fish in Park waters is not required; however, a State of Washington punch card, which may be obtained free of charge, shall be in possession for steelhead fishing. All steelhead caught from Park waters shall be accounted for in the same manner as those caught from State waters.

(7) *Use of boats.* Boats and rubber rafts may be used in the following Park waters:

Bogachiel River.
Hoh River.
Irely Lake.
Lake Crescent.
Lake Mills.
Queets River below Tshletshy Creek.
Quillayute River.
Quinault River below Graves Creek, including the North Fork below Wolf Bar Shelter.

(60 Stat. 238; 5 U.S.C. 1003; 39 Stat. 535; 16 U.S.C. 3)

JOHN E. DOERR,
Superintendent,
Olympic National Park.

[F.R. Doc. 63-3376; Filed, Apr. 1, 1963; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 31]

EMPLOYMENT TAXES

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

In order to conform the Employment Tax Regulations (26 CFR Part 31) to the provisions of section 104 of the Temporary Unemployment Compensation Act of 1958 (72 Stat. 173), as amended by section 524(b) of the Social Security Amendments of 1960 (74 Stat. 982), to section 22(a) of the Alaska Omnibus Act (73 Stat. 146), to section 18(d) of the Hawaii Omnibus Act (74 Stat. 416), to Title V of the Social Security Amendments of 1960 (74 Stat. 970), to section 14 of the Temporary Extended Unemployment Compensation Act of 1961 (75 Stat. 16), to section 110(f) of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 537), to section 1 of the Act of September 26, 1961 (Public Law 87-321, 75 Stat. 683), and to section 7(k) of the Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 830), such regulations are amended as follows:

PARAGRAPH 1. Paragraph (a)(5) of § 31.0-2 is amended by revising subdivision (ii), and by adding subdivisions (iii), (iv), and (v). These amended and added provisions read as follows:

§ 31.0-2 General definitions and use of terms.

(a) *In general.* * * *

(5) * * *

(ii) The Social Security Amendments of 1956 means the act approved August 1, 1956 (70 Stat. 807), as amended.

(iii) The Social Security Amendments of 1958 means the act approved August 28, 1958 (72 Stat. 1013), as amended.

(iv) The Social Security Amendments of 1960 means the act approved September 13, 1960 (74 Stat. 924).

(v) The Social Security Amendments of 1961 means the act approved June 30, 1961 (75 Stat. 131).

PAR. 2. Section 31.3301 is amended to read as follows:

§ 31.3301 Statutory provisions; rate of tax.

SEC. 3301. *Rate of tax.* There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1961 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3.1 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)) after December 31, 1938. In the case of wages paid during the calendar years 1962 and 1963, the rate of such tax shall be 3.5 percent in lieu of 3.1 percent.

[Sec. 3301 as amended by sec. 523(a), Social Security Amendments 1960; sec. 14(a), Temporary Extended Unemployment Compensation Act 1961 (75 Stat. 16)]

PAR. 3. Section 31.3301-2 is amended to read as follows:

§ 31.3301-2 Measure of tax.

The tax for any calendar year is measured by the amount of wages paid by the employer during such year with respect to employment after December 31, 1938. (See § 31.3306(b)-1, relating to wages, and §§ 31.3306(c)-1 to 31.3306(c)-3, inclusive, relating to employment.)

PAR. 4. Section 31.3301-3 is amended to read as follows:

§ 31.3301-3 Rate and computation of tax.

(a) The rates of tax with respect to wages paid in calendar years after 1954 are as follows:

	Percent
In the calendar years 1955 to 1960, both inclusive	3
In the calendar year 1961	3.1
In the calendar years 1962 and 1963	3.5
In the calendar year 1964 and subsequent calendar years	3.1

(b) The tax is computed by applying to the wages paid in a calendar year, with respect to employment after December 31, 1938, the rate in effect at the time the wages are paid.

PAR. 5. Section 31.3302 (a)-1 is amended by revising paragraph (c)(2), the examples in paragraph (c)(3), and the example in paragraph (c)(4), to read as follows:

§ 31.3302(a)-1 Credit against tax for contributions paid.

* * * * *

(c) *Limitation on amount of credit allowable based on time when contributions are paid—* * * *

(2) *Amount of credit allowable when contributions are paid on or before last day for filing return.* Contributions paid into a State unemployment fund on or before the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount equal to such contributions, but not, however, to exceed the total credits determined pursuant to § 31.3302(c)-1. For provisions relating to the time for filing the return, see § 31.6071(a)-1 in Subpart G of this part.

(3) *Amount of credit allowable when contributions are paid after last day for filing return.* * * *

Example (1). The Federal return of the M Company for the calendar year 1961 discloses total wages of $400,000. The Federal tax, imposed at the rate of 3.1 percent, is $12,400. The company is liable for total State contributions of $8,000 for 1961. The due date of the Federal return is January 31, 1962, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1962. If the contributions had been paid on or before January 31, 1962, the entire amount of $8,000 could have been credited against the tax. (Credits could not exceed 2.7 percent of the wages, or $10,800. See § 31.3302(c)-1.) Since the contributions were paid after January 31, 1962, the M Company is entitled to a credit of 90 percent of the amount which would have been allowable as credit had the contributions been paid on time (90 percent of $8,000, or $7,200), the net liability for Federal tax being $5,200 ($12,400 minus $7,200).

Example (2). The facts are the same as in example (1), except that the M Company is liable for and pays total State contributions of $12,000, instead of $8,000. If the contributions had been paid on or before January 31, 1962, the amount allowable as credit would have been $10,800 (2.7 percent of wages of $400,000). Since the contributions were paid after January 31, 1962, the M Company is entitled to a credit of 90 percent of $10,800, or $9,720, the net liability for Federal tax being $2,680 ($12,400 minus $9,720).

Example (3). The Federal return of the R Company for the calendar year 1961 discloses a total tax of $3,100. The company is liable for total State contributions of $2,700 for such year. The due date of the Federal return is January 31, 1962, no extension of time for filing the return having been granted. The R Company pays $1,700 of the total State contributions on or before such date, and the remaining $1,000 on February 1, 1962. If the $1,000 had been paid on or before January 31, 1962, that amount could have been credited against the tax (such amount plus the $1,700 paid on or before January 31, 1962, not exceeding the aggregate credit allowable). Since the $1,000 was paid

after January 31, 1962, the R Company is entitled to a credit of 90 percent of this amount or $900, plus the credit of $1,700 allowable for the contributions paid on or before January 31, 1962. The net liability for Federal tax is thus $500 ($3,100 minus $2,600).

(4) *Amount of credit allowable when contributions are paid to wrong State.* * * *

Example. Employer N, whose Federal return for the calendar year 1961 discloses a total tax of $3,100, employs individuals in State X and State Y during the calendar year 1961. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of $2,700 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1962. When the error was discovered thereafter, N paid to State X contributions in the amount of $2,700 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1962, the contributions to State X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of $2,700 against the Federal tax of $3,100, the net liability for Federal tax being $400 ($3,100 minus $2,700).

PAR. 6. Section 31.3302(b)–1 is amended by revising the example in paragraph (b) (1) to read as follows:

§ 31.3302(b)–1 Additional credit against tax.

* * * * *

(b) *Method of computing amount of additional credit allowable with respect to a State law*—(1) *Certification of a State law as a whole.* * * *

Example. A employs individuals only in State X during the calendar year 1955. The unemployment compensation law of State X has been certified in its entirety to the Secretary of the Treasury by the Secretary of Labor for such year. The highest rate applied in such year under such State law to any taxpayer is 3 percent. However, A has obtained a rate of 1 percent under the law of such State and is required to pay his entire year's contribution at that rate. The amount of remuneration of A's employees subject to contributions under such State law is $25,000. A's additional credit under section 3302(b) is $425, computed as follows:

Remuneration subject to contributions	$25,000
Contributions at 2.7 percent rate	675
Less: Contributions required to be paid at 1 percent rate	250
Additional credit to A	425

Since the 2.7 percent rate is less than the highest rate applied (3 percent), the 2.7 percent rate is used in computing the amount ($675) from which the amount of contributions required to be paid at the 1 percent rate ($250) is deducted in order to ascertain the additional credit ($425).

PAR. 7. Section 31.3302(c) is amended to read as follows:

§ 31.3302(c) Statutory provisions; credits against tax; limit on total credits.

SEC. 3302. *Credits against tax.* * * *

(c) *Limit on total credits.* (1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act before the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) In the case of a taxable year beginning with the fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) In the case of any succeeding taxable year beginning wtih a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

(3) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act on or after the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) (i) In the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) In the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 10 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) In the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) 2.7 percent, exceeds

(ii) The average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) In the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) The 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) The average employer contribution rate for such State for the calendar year preceding such taxable year.

[Sec. 3302(c) as amended by sec. 523(b), Social Security Amendments 1960]

Sec. 522(b). [*Social Security Amendments of 1960*] * * *

(1) No amount shall be transferred on or after the date of the enactment of this Act from the Federal unemployment account to the account of any State in the Unemployment Trust Fund pursuant to any application made under section 1201(a) of the Social Security Act as in effect before such date; except that, if—

(A) Some but not all of an amount certified by the Secretary of Labor to the Secretary of the Treasury for transfer to the account of any State was transferred to such account before such date, and

(B) The Governor of such State, after the date of the enactment of this Act, requests the Secretary of the Treasury to transfer all or any part of the remainder to such account,

the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer from the Federal unemployment account to the account of such State in the Unemployment Trust Fund the amount so requested or (if smaller) the amount available in the Federal unemployment account at the time of the transfer. No such amount shall be transferred under this paragraph after the one-year period beginning on the date of the enactment of this Act.

(2) For purposes of section 3302(c) of the Federal Unemployment Tax Act and titles IX and XII of the Social Security Act, if any amount is transferred pursuant to paragraph (1) to the unemployment account of any State, such amount shall be treated as an advance made before the date of the enactment of this Act.

Sec. 104. [*Temporary Unemployment Compensation Act of 1958 (72 Stat. 173)*]. The total credits allowed under section 3302(c) of the Federal Unemployment Tax Act (26 U.S.C. 3302(c)) to taxpayers with respect to wages attributable to a State for the taxable year beginning on January 1, 1963, and for each taxable year thereafter, shall be reduced in the same manner as that provided by section 3302(c)(2) of the Federal Unemployment Tax Act for the repayment of advances made under title XII of the Social Security Act, as amended (42 U.S.C. 1321 et seq.), unless or until the Secretary of the Treasury finds that before November 10 of the taxable year there have been restored to the Treasury the amounts of temporary unemployment compensation paid in the State under this Act (except amounts paid to individuals who exhausted their unemployment compensation under title XV of the Social Security Act and title IV of the Veterans' Readjustment Assistance Act of 1952 prior to their making their first claims under this Act), the amount of costs incurred in the administration of this Act with respect to the State, and the amount estimated by the Secretary of Labor as the State's proportionate share of other costs incurred in the administration of this Act.

[Sec. 104 as amended by sec. 524(b), Social Security Amendments 1960]

PAR. 8. Section 31.3302(c)–1 is amended to read as follows:

§ 31.3302(c)–1 Limit on total credits.

(a) *In general.* Paragraph (b) of this section relates to the limitation on the aggregate of the credits allowable under section 3302 (a) and (b). Paragraph (c) of this section relates to reductions, under certain circumstances, of the total credits allowable after applying section 3302 (a), (b), and (c)(1). In paragraph (c) of this section, subparagraphs (1), (2), and (3) relate, respectively, to reductions of credits in respect of advances under title XII of the Social Security Act before September 13, 1960, advances un-

der title XII of the Social Security Act after September 12, 1960, and payments under the Temporary Unemployment Compensation Act of 1958. A reduction of credit under subparagraph (1), (2), or (3) of paragraph (c) of this section applies separately from, and in addition to, a reduction under any other such subparagraph. See section 3302(d) and § 31.3302(d)–1 for definitions and special rules relating to section 3302(c), and for a provision that, in applying section 3302(c), the Federal tax shall be computed at the rate of 3 percent.

(b) *Limitation on aggregate credit.* The aggregate of the credit under section 3302(a) and the additional credit under section 3302(b) shall not exceed 90 percent of the tax against which credit is taken, computed as if the tax were imposed at the rate of 3 percent. Thus, the aggregate of the credit which is allowable to an employer for any taxable year shall not exceed 2.7 percent of the wages paid by the employer during the year.

(c) *Reductions of amount of credit otherwise allowable*—(1) *Advances before September 13, 1960, under title XII of Social Security Act.* If any balance of an advance or advances under title XII of the Social Security Act, made before September 13, 1960, to the unemployment account of a State, remains unpaid on January 1 of four consecutive taxable years, the total credits otherwise allowable under section 3302 to a taxpayer subject to the unemployment compensation law of the State shall be reduced for the taxable year beginning with the fourth consecutive January 1, unless prior to November 10 of that taxable year the total amount of any advances made to the account of the State has been fully repaid. The reduction made pursuant to this subparagraph in the total credits otherwise allowable for the taxable year beginning with the fourth consecutive January 1 shall be 0.15 percent of the wages paid by the taxpayer during the taxable year which are attributable to the State (that is, 5 percent of the Federal tax, computed as if imposed at the rate of 3 percent of the wages). In the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of an unreturned advance or advances exists, the total credits otherwise allowable shall be reduced unless prior to November 10 of that succeeding taxable year the total amount of any advance or advances made to the account of the State has been fully repaid. The reduction for each such succeeding taxable year beginning with a consecutive January 1 on which such a balance exists shall be a percentage of the wages paid by the taxpayer during that succeeding taxable year which are attributable to the State. The percentage reduction for any such succeeding taxable year shall be the percentage reduction for the immediately preceding taxable year plus 0.15 percent of the wages paid by the taxpayer during the taxable year which are attributable to the State.

Example. If an advance made in 1957 under title XII of the Social Security Act to the unemployment account of State X is fully returned in 1958, but an advance made to the account of State X in 1958 is not fully returned before November 10, 1961, a balance of an advance remains unreturned on January 1 of each of four consecutive taxable years (1958 through 1961), and remains unreturned on November 10, 1961. In this event, the total credits otherwise allowable under section 3302 will be reduced for the taxable year in the case of any taxpayer who in 1961 is subject to the unemployment compensation law of State X. The reduction will be 0.15 percent of the wages paid by the taxpayer during 1961 which are attributable to State X. If a balance continues to exist on January 1, 1962, and if all advances made before September 13, 1960, are not fully returned before November 10, 1962, the total credits will be reduced for the taxable year 1962. The reduction in the total credits for the taxable year 1962 in the case of any taxpayer who in 1962 is subject to the unemployment compensation law of State X will be 0.3 percent (the 0.15 percent reduction in effect for 1961 plus an additional 0.15 percent) of the wages paid by the taxpayer during 1962 which are attributable to State X.

(2) *Advances after September 12, 1960, under title XII of Social Security Act*—(i) *In general.* If any balance of an advance or advances under title XII of the Social Security Act, made after September 12, 1960, to the unemployment account of a State, remains unpaid on January 1 of two consecutive taxable years, the total credits otherwise allowable under section 3302 to a taxpayer subject to the unemployment compensation law of the State shall be reduced for the taxable year beginning with the second consecutive January 1, unless prior to November 10 of that taxable year the total amount of any such advance or advances made to the account of the State has been fully repaid. The reduction made pursuant to this subdivision in the total credits otherwise allowable for the taxable year beginning with the second consecutive January 1 shall be 0.3 percent of the wages paid by the taxpayer during the taxable year which are attributable to the State (that is, 10 percent of the Federal tax, computed as if imposed at the rate of 3 percent of the wages). In the case of any succeeding taxable year beginning with a consecutive January 1 on which there exists such a balance of an unreturned advance or advances made after September 12, 1960, the total credits otherwise allowable shall be further reduced unless prior to November 10 of that succeeding taxable year the total amount of any such advance or advances made to the account of the State has been fully repaid. The reduction for each such succeeding taxable year beginning with a consecutive January 1 on which such a balance exists shall be a percentage of the wages paid by the taxpayer during that succeeding taxable year which are attributable to the State. The percentage reduction for any such succeeding taxable year shall be the aggregate of (*a*) the percentage reduction (without regard to subdivision (ii) or (iii) of this subparagraph) for the immediately preceding taxable year, (*b*) 0.3 percent of the wages paid by the taxpayer during the taxable year which are attributable to the State, and (*c*) the percentage, if any, described in subdivision (ii) or (iii) of this subparagraph.

(ii) *Additional reduction if a balance of advances exists after third or fourth consecutive January 1.* If the credit reduction described in subdivision (i) of this subparagraph is made for the third or fourth consecutive taxable year, the total credits otherwise allowable under section 3302 to a taxpayer subject to the unemployment compensation law of the State shall be further reduced for the taxable year unless the average employer contribution rate (see section 3302 (d) (4)) for such State for the calendar year preceding such taxable year is at least 2.7 percent. The percentage of reduction, if any, under this subdivision shall be the percentage referred to in section 3302(c) (3) (B) which is certified by the Secretary of Labor pursuant to section 3302(d) (7).

(iii) *Additional reduction if a balance of advances exists after fifth or any succeeding consecutive January 1.* If the credit reduction described in subdivision (i) of this subparagraph is made for the fifth or any succeeding taxable year, the total credits otherwise allowable under section 3302 to a taxpayer subject to the unemployment compensation law of the State shall be further reduced for the taxable year unless the average employer contribution rate (see section 3302 (d) (4)) for the State for the calendar year preceding such taxable year equals or exceeds the 5-year benefit cost rate (see section 3302(a) (5)) applicable to the State for the taxable year or 2.7 percent, whichever is higher. The percentage of reduction, if any, under this subdivision for a taxable year shall be the percentage referred to in section 3302(c) (3) (C) which is certified by the Secretary of Labor pursuant to section 3302(d) (7).

(3) *Payments under the Temporary Unemployment Compensation Act of 1958.* If any amount of temporary unemployment compensation was paid in a State under the Temporary Unemployment Compensation Act of 1958, the total credits otherwise allowable under section 3302 to a taxpayer with respect to wages attributable to the State for the taxable year beginning January 1, 1963, and for each taxable year thereafter, shall be reduced unless prior to November 10 of the taxable year there have been restored to the Treasury the amounts of temporary unemployment compensation paid in the State (except amounts paid to individuals who exhausted their unemployment compensation under title XV of the Social Security Act and title IV of the Veterans' Readjustment Assistance Act of 1952 prior to their making their first claims under the Temporary Unemployment Compensation Act of 1958), the amount of costs incurred in the administration of the Temporary Unemployment Compensation Act of 1958 with respect to the State, and the amount estimated by the Secretary of Labor as the State's proportionate share of other costs incurred in the administration of such Act. The reduction for a taxable year shall be a percentage of the wages paid by the taxpayer during the year which are attributable to the State. The percentage

for the taxable year 1963 is 0.15 (that is, 5 percent of the Federal tax, computed as if imposed at the rate of 3 percent). The percentage for each succeeding year shall be the percentage reduction for the immediately preceding taxable year plus 0.15 percent. Thus, the percentage under this subparagraph for 1964 is 0.3 (0.15 percent for 1963, plus 0.15 percent).

Example. The cumulative effect of the credit reductions described in this paragraph may be illustrated by the following example: Advances to the unemployment account of State X were made in 1957 and in 1961 under title XII of the Social Security Act. Payments under the Temporary Unemployment Compensation Act of 1958 were made in State X in 1958. None of the advances or payments are returned before November 10, 1964. As a consequence:

(i) The credit reductions described in subparagraph (1) of this paragraph have been made for 1961, 1962, and 1963 (the fourth, fifth, and sixth successive years after 1957), and the rate of credit reduction under subparagraph (1) for 1964 is 0.6 percent;

(ii) The credit reduction described in subparagraph (2) of this paragraph has been made for 1963 (the second successive year after 1961). The rate of credit reduction under subparagraph (2) for 1964 is 1 percent (the aggregate of 0.6 percent under section 3302(c)(3)(A) and 0.4 percent (assumed for purposes of this example to be the percentage referred to in section 3302(c)(3)(B) which is certified by the Secretary of Labor)); and

(iii) The credit reduction described in subparagraph (3) of this paragraph has been made for 1963 at the rate of .15 percent. The rate of credit reduction for 1964 is 0.3 percent.

The cumulative rate of credit reduction applicable for 1964 to wages attributable to State X is 1.9 percent, representing the aggregate of the percentage reductions applicable under subparagraphs (1), (2), and (3) of this paragraph (0.6 percent, 1 percent, and 0.3 percent, respectively). In 1964 Employer A paid wages of $100,000, all of which are subject to the unemployment compensation law of State X. The credit which would be allowable (under section 3302 (a), (b), and (c)(1)) if there were no credit reduction is $2,700.

Employer A's tax is computed as follows for 1964:

Total taxable wages (attributable to State X)		$100,000
Gross Federal tax (3.1 percent of wages)		3,100
Less credit:		
Gross credit	$2,700	
Credit reduction (1.9 percent of wages)	1,900	
Net credit		800
Amount of Federal tax due		2,300

PAR. 9. Immediately after § 31.3302(c)–1 the following is inserted:

§ 31.3302(d) Statutory provisions; definitions and special rules relating to limit on total credits.

SEC. 3302. *Credits against tax.* * * *

(d) *Definitions and special rules relating to subsection (c).*—(1) *Rate of tax deemed to be 3 percent.* In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of 3.1 percent (or, in the case of the tax imposed with respect to the calendar years 1962 and 1963, in lieu of 3.5 percent).

(2) *Wages attributable to a particular State.* For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

(3) *Additional taxes inapplicable where advances are repaid before November 10 of taxable year.* Paragraph (2) or (3) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) *Average employer contribution rate.* For purposes of subparagraphs (B) and (C) of subsection (c)(3), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) The total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B) The total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(3), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) *5-year benefit cost rate.* For purposes of subparagraph (C) of subsection (c)(3), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) One-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) The total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) *Rounding.* If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(3) is not a multiple of 0.1 percent, it shall be rounded to the nearest multiple of 0.1 percent.

(7) *Determination and certification of percentages.* The percentage referred to in subsection (c)(3) (B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(8) *Cross reference.* For reduction of total credits allowable under subsection (c), see section 104 of the Temporary Unemployment Compensation Act of 1958.

[Sec. 3302(d) as added by sec. 523(b), Social Security Amendments 1960 and as amended by sec. 14(b), Temporary Extended Unemployment Compensation Act 1961 (75 Stat. 16)]

§ 31.3302(d)–1 Definitions and special rules relating to limit on total credits.

(a) *Rate of tax deemed to be 3 percent.* In applying the provisions of section 3302(c) relating to the limitation on total credits, and to reductions of credits otherwise allowable, the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of any other rate prescribed in section 3301 (see § 31.3301–3).

(b) *Wages attributable to a particular State.* For purposes of section 3302(c)(2) or (3), wages are attributable to a particular State if they are subject to the unemployment compensation law of the State. If wages are not subject to the unemployment compensation law of any State, the determination as to whether such wages, or any portion thereof, are attributable to the particular State with respect to which the reduction in total credits is imposed shall be made in accordance with rules prescribed by the Commissioner.

(c) *Employment Security Act of 1960.* The Employment Security Act of 1960, referred to in section 3302(c)(2), means title V of the Social Security Amendments of 1960.

§ 31.3302(e) Statutory provisions; successor employer.

SEC. 3302. *Credits against tax.* * * *

(e) *Successor employer.* Subject to the limits provided by subsection (c), if—

(1) An employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) Such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

[Sec. 3302(e) as added by sec. 1(a), Act of Sept. 26, 1961 (Pub. Law 87–321, 75 Stat. 683)]

§ 31.3302(e)–1 Successor employer.

(a) *In general.* In addition to the credits against the tax allowable under section 3302 (a) and (b) for any taxable year after 1960, the taxpayer may be entitled to an amount of credit under section 3302(e). Credit under section 3302(e) is provided in the case of a taxpayer who (1) acquires substantially all of the property used in a trade or business, or in a separate unit of a trade or business, of another person (referred to in this section as a predecessor) who is not an employer (see § 31.3306(a)–1) for the calendar year in which the acquisition takes place, and (2) immedi-

ately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of the predecessor.

(b) *Method of computing credit under section 3302(e).* (1) Except as provided in subparagraph (2) of this paragraph, the amount of credit to which the taxpayer may be entitled under section 3302(e) is the amount of credit to which the predecessor would be entitled under section 3302 (a), (b), and (e), without regard to the limits in section 3302(c), if the predecessor were an employer.

(2) If, during the calendar year in which the acquisition takes place, the predecessor pays remuneration, subject to contributions under the unemployment compensation law of a State, to any employee other than the individuals referred to in paragraph (a) of this section, the taxpayer will be entitled only to a portion of the amount of credit described in subparagraph (1) of this paragraph. The portion is determined by multiplying such amount by a fraction. The numerator of the fraction is the total amount of remuneration, subject to such contributions, paid by the predecessor during such year to the individuals referred to in paragraph (a) of this section. The denominator of the fraction is the total amount of remuneration, subject to such contributions, paid by the predecessor during such year to all employees for services performed by them in the trade or business, or unit thereof, acquired by the taxpayer.

Example. In April 1961 the X Partnership terminated after selling all of its property to the Y Corporation. During 1961, the X Partnership paid its employees and former employees a total of $1,000,000 as remuneration subject to contributions under the employment compensation law of a State. (Note that the X Partnership did not qualify as an employer for 1961 for purposes of the Federal unemployment tax, because it had employees during less than 20 weeks in 1961.) When the Y Corporation acquired the property it concurrently employed all individuals who were then in the employ of the X Partnership. Assume that the X Partnership, if it had qualified as an employer for 1961, would have been entitled to a total credit against the Federal tax of $30,000 under section 3302 (a) and (b), without regard to the limits in section 3302(c). Of the $1,000,000 remuneration paid by the X Partnership in 1961, one-fifth (or $200,000) was paid to individuals who were employed by the Y Corporation at the time it acquired the property of the X Partnership. Under section 3302(e), therefore, the Y Corporation is entitled to credit of $6,000, which is one-fifth of the credit ($30,000) which would have been available to the X Partnership.

(3) The aggregate amount of credit allowable to the taxpayer under section 3302 (a), (b), and (e) is subject to the limits in section 3302(c).

(c) *Proof of credit under section 3302(e).* Credit under section 3302(e) shall not be allowed against the tax for any taxable year unless there is submitted to the district director (1) such information or proof as may be called for in the return on which the credit is reported, or in the instructions relating to the return, and (2) such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the credit provided for under section 3302(e).

(d) *Cross-references.* See paragraph (b) of § 31.3306(b)(1)–1 for examples of the acquisition of property used in a trade or business, or in a separate unit thereof.

PAR. 10. Section 31.3305 is amended by revising subsections (b) and (g) of section 3305, by adding a historical note after section 3305, and by adding after such historical note section 531(g) of the Social Security Amendments of 1960, to read as follows:

§ 31.3305 Statutory provisions; applicability of State law.

SEC. 3305. *Applicability of State law.* * * *

(b) *Federal instrumentalities in general.* The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

* * * * *

(g) *Vessels operated by general agents of United States.* The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

(1) Owned by or bareboat chartered to the United States, and

(2) Whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

* * * * *

[Sec. 3305 as amended by sec. 531 (a) and (b), Social Security Amendments 1960, effective with respect to remuneration paid after 1961 for services performed after 1961]

SEC. 531. [*Social Security Amendments of 1960*] * * *

(g) Notwithstanding section 203(b) of the Farm Credit Act of 1959 [73 Stat. 390], sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1954 * * * shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives.

PAR. 11. Section 31.3306(b)–1 is amended by revising paragraph (j)(1) to read as follows:

§ 31.3306(b)–1 Wages.

* * * * *

(j) * * *

(1) Remuneration for services which do not constitute employment under section 3306 (c).

PAR. 12. Section 31.3306(b)(1)–1 is amended by revising paragraph (b)(3) to read as follows:

§ 31.3306(b)(1)–1 $3,000 limitation.

* * * * *

(b) *Wages paid by predecessor attributed to successor.* * * *

(3) The method of acquisition by an employer of the property of another employer is immaterial. The acquisition may occur as a consequence of the incorporation of a business by a sole proprietor or a partnership, the continuance without interruption of the business of a previously existing partnership by a new partnership or by a sole proprietor, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

PAR. 13. Section 31.3306(b)(5) is amended to read as follows:

§ 31.3306(b)(5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

SEC. 3306. *Definitions.* * * *

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * *

(5) Any payment made to, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a), or

(C) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);

[Sec. 3306(b)(5) as amended by sec. 7(k), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 830)]

PAR. 14. Section 31.3306(b)(5)–1 is amended to read as follows:

§ 31.3306(b)(5)–1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

(a) *Payments from or to certain tax-exempt trusts.* The term "wages" does not include any payment made—

(1) By an employer, on behalf of an employee or his beneficiary, into a trust, or

(2) To, or on behalf of, an employee or his beneficiary from a trust,

if at the time of such payment the trust is exempt from tax under section 501(a) as an organization described in section 401(a). A payment made to an employee of such a trust for services rendered as an employee of the trust and not as a beneficiary thereof is not within this exclusion from wages.

(b) *Payments under or to certain annuity plans.* (1) The term "wages" does not include any payment made after December 31, 1962—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan,

if at the time of such payment the annuity plan is a plan described in section 403(a).

(2) The term "wages" does not include any payment made before January 1, 1963—

(i) By an employer, on behalf of an employee or his beneficiary, into an annuity plan, or

(ii) To, or on behalf of, an employee or his beneficiary under an annuity plan,

if at the time of such payment the annuity plan meets the requirements of section 401(a) (3), (4), (5), and (6).

(c) *Payments under or to certain bond purchase plans.* The term "wages" does not include any payment made after December 31, 1962—

(1) By an employer, on behalf of an employee or his beneficiary, into a bond purchase plan, or

(2) To, or on behalf of, an employee or his beneficiary under a bond purchase plan,

if at the time of such payment the plan is a qualified bond purchase plan described in section 405(a).

PAR. 15. Section 31.3306(c) is amended to read as follows:

§ 31.3306(c) Statutory provisions; definitions; employment.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, except—

[Sec. 3306(c) as amended by sec. 532(a), Social Security Amendments 1960]

Par. 16. Section 31.3306(c)–2 is amended to read as follows:

§ 31.3306(c)–2 Employment; services performed after 1954.

(a) *In general.* Whether services performed after 1954 constitute employment is determined under subsections (c) and (n) of section 3306.

(b) *Services performed within the United States.* Services performed after 1954 within the United States (see § 31.3306(j)–1) by an employee for the person employing him, unless specifically excepted under section 3306(c), constitute employment. With respect to services performed within the United States, the place where the contract of service is entered into is immaterial. The citizenship or residence of the employee or of the person employing him also is immaterial except to the extent provided in any specific exception from employment. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract performs services within the United States, there may be to that extent employment.

(c) *Services performed outside the United States*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, services performed outside the United States (see § 31.3306(j)–1) do not constitute employment.

(2) *On or in connection with an American vessel or American aircraft.* (i) This subparagraph relates to services performed after 1954 "on or in connection with" an American vessel, and to services performed after 1961 "on or in connection with" an American aircraft to the extent that the remuneration for the latter services is paid after 1961. Such services performed outside the United States by an employee for the person employing him constitute employment if:

(*a*) The employee is also employed "on and in connection with" such vessel or aircraft when outside the United States; and

(*b*) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of the contract under which the services are performed and while the employee is employed on the vessel or aircraft it touches at a port within the United States; and

(*c*) The services are not excepted under section 3306(c). (See particularly § 31.3306(c)(17)–1, related to fishing.)

(ii) An employee performs services on and in connection with the vessel or aircraft if he performs services on the vessel or aircraft which are also in connection with the vessel or aircraft. Services performed on the vessel by employees as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since the services are also connected with the vessel. Similarly, services performed on the aircraft by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(iii) If services are performed by an employee "on and in connection with" an American vessel or American aircraft when outside the United States and the conditions in (*b*) and (*c*) of subdivision (i) of this subparagraph are met, then the services of that employee performed on or in connection with the vessel or aircraft constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(iv) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which and while the employee is employed on the vessel or aircraft it does not touch at a port within the United States, do not constitute employment, notwithstanding that services performed by other members of the crew or other employees on or in connection with the vessel or aircraft may constitute employment.

(v) A vessel includes every description of watercraft, or other contrivance, used as a means of transportation on water. An aircraft includes every description of craft, or other contrivance, used as a means of transportation through the air. In the case of an aircraft, the term "port" means an airport. An airport means an area on land or water used regularly by aircraft for receiving or discharging passengers or cargo. For definitions of "American vessel" and "American aircraft", see § 31.3306(m)–1.

(vi) With respect to services performed outside the United States on or in connection with an American vessel or American aircraft, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the employer is material only in case it has a bearing in determining whether a vessel is an American vessel.

PAR. 17. Paragraphs (a) and (c) of § 31.3306(c)–3 are amended to read as follows:

§ 31.3306(c)–3 Employment; excepted services in general.

(a) Services performed by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted from employment under any of the numbered paragraphs of section 3306(c). Services so excepted do not constitute employment for purposes of the tax even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft. If not otherwise provided in the regulations relating to the numbered paragraphs of section 3306(c), such regulations apply with respect to services performed after 1954.

* * * * *

(c) For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 31.3306(d)–1.

PAR. 18. Section 31.3306(c)(4) is amended to read as follows:

§ 31.3306(c)(4) Statutory provisions; definitions; employment; services on or in connection with a non-American vessel or aircraft.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(4) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

[Sec. 3306(c)(4) as amended by sec. 532(b), Social Security Amendments 1960]

PAR. 19. Section 31.3306(c)(4)–1 is amended to read as follows:

§ 31.3306(c)(4)–1 Services on or in connection with a non-American vessel or aircraft.

(a) Services performed within the United States by an employee for an employer "on or in connection with" a vessel not an American vessel, or "on or in connection with" an aircraft not an American aircraft, are excepted from employment if the employee is employed by the employer "on and in connection with" the vessel or aircraft when outside the United States.

(b) An employee performs services on and in connection with the vessel or aircraft if he performs services on the vessel or aircraft when outside the United States which are also in connection with the vessel or aircraft. Services performed on the vessel outside the United States by employees as officers or members of the crew, or by employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Similarly, services performed on the aircraft outside the United States by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(c) The expression "on or in connection with" refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel. For definitions of the terms "vessel" and "aircraft", see paragraph (c)(2)(v) of § 31.3306(c)–2. For definitions of the terms "American vessel" and "American aircraft", see § 31.3306(m)–1.

(e) Since the only services performed outside the United States which constitute employment are those described in section 3306(c) and paragraph (c) of § 31.3306(c)–2 (relating to services performed outside the United States on or in connection with an American vessel or American aircraft), services performed outside the United States on or in connection with a vessel not an American vessel, or an aircraft not an American aircraft, do not constitute employment in any event.

(f) The provisions of section 3306(c)(4) and of this section, insofar as they relate to services performed on or in connection with an aircraft not an American aircraft, apply only to services performed after 1961 for which remuneration is paid after 1961.

PAR. 20. Section 31.3306(c)(6) is amended to read as follows:

§ 31.3306(c)(6) Statutory provisions; definitions; employment; services in employ of United States Government or instrumentality thereof.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) Wholly or partially owned by the United States, or

(B) Exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

[Sec. 3306(c)(6) as amended by sec. 531(c) Social Security Amendments 1960]

SEC. 531. [*Social Security Amendments of 1960*] * * *

(g) Notwithstanding section 203(b) of the Farm Credit Act of 1959 [73 Stat. 390], sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1954 * * * shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives.

PAR. 21. Section 31.3306(c)(6)–1 is amended to read as follows:

§ 31.3306(c)(6)–1 Services in employ of United States or instrumentality thereof.

(a) *Services in employ of United States or wholly-owned instrumentality thereof.* Services performed in the employ of the United States Government, except as provided in section 3306(n) (see § 31.3306(n)–1), are excepted from employment. Services performed in the employ of an instrumentality of the United States which is wholly owned by the United States also are excepted from employment.

(b) *Services in employ of instrumentality not wholly owned by United States*—(1) *Services performed after 1961.* Services performed after 1961 in the employ of an instrumentality of the United States which is partially owned by the United States are excepted from employment, if the remuneration for such service is paid after 1961. Services performed after 1961 in the employ of an instrumentality of the United States which is neither wholly owned nor partially owned by the United States are excepted from employment if (i) the instrumentality is exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to section 3301 or the corresponding section of prior law in granting exemption from such tax, and (ii) the remuneration for such service is paid after 1961. For provisions which make general exemptions from Federal taxation ineffectual as to the tax imposed by section 3301, see § 31.3308–1.

(2) *Services performed before 1962.* Services performed in the employ of an instrumentality of the United States which is not wholly owned by the United States are excepted from employment if the instrumentality is exempt from the tax imposed by section 3301 by virtue of any other provision of law, and (i) the services are performed before 1962 or (ii) remuneration for the services is paid before 1962.

PAR. 22. Paragraph (b) of § 31.3306(c)(7)–1 is amended to read as follows:

§ 31.3306(c)(7)–1 Services in employ of States or their political subdivisions or instrumentalities.

* * * * *

(b) For provisions relating to the term "State" see § 31.3306(j)–1.

PAR. 23. Section 31.3306(c)(8) is amended to read as follows:

§ 31.3306(c)(8) Statutory provisions; definitions; employment; services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * *

any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(8) Service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

[Sec. 3306(c)(8) as amended by sec. 533, Social Security Amendments 1960]

PAR. 24. Section 31.3306(c)(8)–1 is amended to read as follows:

§ 31.3306(c)(8)–1 Services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

(a) *Services performed after 1961.* Services performed by an employee after 1961 in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a) are excepted from employment, if the remuneration for such service is paid after 1961. For provisions relating to exemption from income tax of an organization described in section 501(c)(3), see Part 1 of this chapter (Income Tax Regulations).

(b) *Services performed before 1962.* (1) Services performed by an employee in the employ of an organization described in section 3306(c)(8) as in effect before 1962, that is, a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, are excepted from employment if (i) the services are performed before 1962, or (ii) remuneration for the services is paid before 1962.

(2) Any organization which is an organization of a type described in section 501(c)(3) and which—

(i) Is exempt from income tax under section 501(a), or

(ii) Has been denied exemption from income tax under section 501(a) by reason of the provisions of section 503 or 504, relating to prohibited transactions and to accumulations out of income, respectively,

is an organization of a type described in section 3306(c)(8) as in effect before 1962. An organization which would be an organization of a type described in section 501(c)(3) except for those provisions of section 501(c)(3) which are not contained in section 3306(c)(8) as in effect before 1962 (provisions relating to participation or intervention in a political campaign on behalf of a candidate for public office) is also an organization of a type described in section 3306(c)(8) as in effect before 1962.

PAR. 25. In paragraph (b) of § 31.3306(c)(9)–1, section (1)(i) of the Railroad Unemployment Insurance Act and the historical note are revised to read as follows:

§ 31.3306(c)(9)–1 Railroad industry; services performed by an employee or an employee representative under the Railroad Unemployment Insurance Act.

* * * * *

(b) Section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351), as amended, provides, in part, as follows:

* * * * *

(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative: *Provided, however,* That in computing the compensation paid to any employee, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before the calendar month next following the month [May] in which this Act was amended in 1959, or in excess of $400 for any month after the month [May] in which this Act was so amended, shall be recognized. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned.

* * * * *

[Sec. 1, Railroad Unemployment Insurance Act, as amended by secs. 1 and 2, Act of June 20, 1939, 53 Stat. 845; secs. 1 and 3, Act of Aug. 13, 1940, 54 Stat. 785, 786; sec. 15, Act of Apr. 8, 1942, 56 Stat. 210; secs. 1 and 2, Act of July 31, 1946, 60 Stat. 722; sec. 302, Act of Aug. 31, 1954, 68 Stat. 1040; sec. 301, Act of May 19, 1959, Pub. Law 86–28, 73 Stat. 30]

PAR. 26. Sections 31.3306(c)(10)(A); 31.3306(c)(10)(A)–1; 31.3306(c)(10)(B); 31.3306(c)(10)(B)–1; 31.3306(c)(10)(C); 31.3306(c)(10)(C)–1; 31.3306(c)(10)(D); 31.3306(c)(10)(D)–1; 31.3306(c)(10)(E); 31.3306(c)(10)(E)–1 are deleted.

PAR. 27. Immediately after § 31.3306(c)(9)–1 the following is inserted:

§ 31.3306(c)(10) Statutory provisions; definitions; employment; services in the employ of certain organizations exempt from income tax, performed in calendar quarter for remuneration less than $50; services performed in the employ of a school, college, or university by certain students.

SEC. 3306. *Definitions.* * * *

(C) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(10)(A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than $50, or

(B) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

[Sec. 3306(c)(10) as amended by sec. 534, Social Security Amendments 1960]

§ 31.3306(c)(10)–1 Services in the employ of certain organizations exempt from income tax.

(a) *In general.* (1) This section deals with the exception from employment of certain services performed in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521. (See the provisions of §§ 1.401–1, 1.501(a)–1, and 1.521–1 of this chapter (Income Tax Regulations).) If the services meet the tests set forth in paragraphs (b), (c), (d), or (e) of this section, the services are excepted.

(2) See also § 31.3306(c)(8)–1 for provisions relating to the exception of services performed in the employ of religious, charitable, educational, or certain other organizations exempt from income tax; § 31.3306(c)(10)–2 for provisions relating to the exception of services performed by certain students in the employ of a school, college, or university; and § 31.3306(c)(10)–3 for provisions relating to the exception of services performed before 1962 in the employ of certain employees' beneficiary associations.

(b) *Remuneration less than $50 for calendar quarter.* Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 are excepted from employment, if the remuneration for the service is less than $50. The test relating to remuneration of $50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organiza-

tion in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example (1). X is a local lodge of a fraternal organization and is exempt from income tax under section 501(a) as an organization of the character described in section 501 (c)(8). X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor or its clubhouse. For service performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter is less than $50, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see § 31.3306(a)–1). Even though it is subsequently determined that X is an employer, A's remuneration of $30 for services performed during the first calendar quarter of such year is not subject to tax. B's services, however, are not excepted during such quarter since the remuneration therefor is not less than $50. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of $180 for services performed during the first calendar quarter is included in computing the tax.

Example (2). The facts are the same as in example (1), above, except that on April 1, 1955, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns $60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than $50. A, therefore, is counted as an employee in employment during all of the second quarter for the purpose of determining whether the X organization is an employer. If it is determined that the X organization is an employer, A's remuneration of $60 for services performed during the second calendar quarter is included in computing the tax.

Example (3). The facts are the same as in example (1), above, except that A earns $120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter is less than $50. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year is not less than $50, the services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if it is determined that the X organization is an employer, that portion of the $120 attributable to services performed in such quarter is included in computing the tax.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies, before 1962.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 501(a) are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed before 1962.* (1) Services performed in the employ of an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where the services are performed are immaterial; the tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(2) The term "school, college, or university" as used in this paragraph is to be taken in its commonly or generally accepted sense. For provisions relating to services performed before 1962 by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see paragraph (b) of § 31.3306(c)(10)–2. For provisions relating to services performed after 1961 by a student enrolled and regularly attending classes at a school, college, or university in the employ of such school, college, or university, see paragraph (a) of § 31.3306(c)(10)–2.

(e) *Services performed before 1962 in employ of agricultural or horticultural organization exempt from income tax.* (1) Services performed by an employee in the employ of an agricultural or horticultural organization which is described in section 501(c)(5) and the regulations thereunder and which is exempt from income tax under section 501(a) are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962.

(2) For purposes of this paragraph, the type of services performed by the employee, the amount of remuneration for the services, and the place where the services are performed are immaterial; the test is the character of the organization in whose employ the services are performed.

§ 31.3306(c)(10)–2 Services of student in employ of school, college, or university.

(a) *Services performed after 1961.* Services performed after 1961 in the employ of a school, college, or university, by a student who is enrolled and is regularly attending classes at the school, college, or university, are excepted from employment (whther or not the school, college, or university is exempt from income tax), if remuneration for the services is paid after 1961.

(b) *Services performed before 1962.* Services performed in the employ of a school, college, or university not exempt from income tax under section 501(a), by a student who is enrolled and is regularly attending classes at the school, college, or university, are excepted from employment if the services are performed before 1962 or if remuneration for the services is paid before 1962.

(c) *Application of section.* (1) For purposes of this section, the type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are immaterial; the tests are the character of the organization in the employ of which the services are performed and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

(2) The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services.

(3) The term "school, college, or university" as used in this section is to be taken in its commonly or generally accepted sense.

(4) For provisions relating to services performed before 1962 by a student in the employ of an organization exempt from income tax, see paragraph (d) of § 31.3306(c)(10)–1.

§ 31.3306(c)(10)–3 Services before 1962 in employ of certain employees' beneficiary associations.

(a) *Voluntary employees' beneficiary associations.* Services performed by an employee in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents are excepted from employment if—

(1) No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual,

(2) 85 percent or more of the income consists of amounts collected from mem-

bers for the sole purpose of making such payments and meeting expenses, and

(3) The services are performed before 1962, or remuneration for the services is paid before 1962.

(b) *Federal employees' beneficiary associations.* Services performed by an employee in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries are excepted from employment if—

(1) Admission to membership in the association is limited to individuals who are officers or employees of the United States Government,

(2) No part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual, and

(3) The services are performed before 1962, or remuneration for the services is paid before 1962.

(c) *Application of tests.* For purposes of this section, the type of services performed by the employee, the amount of remuneration for the services, and the place where the services are performed are immaterial; the test is the character of the organization in whose employ the services are performed.

PAR. 28. Section 31.3306(c)(16) is amended to read as follows:

§ 31.3306(c)(16) Statutory provisions; definitions; employment; services in employ of international organization.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * *

(16) Service performed in the employ of an international organization;

[Sec. 3306(c)(16) as amended by sec. 110(f)(1), Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 537)]

PAR. 29. Section 31.3306(c)(17) is amended to read as follows:

§ 31.3306(c)(17) Statutory provisions; definitions; employment; fishing services.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * * *

(17) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity) except—

(A) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) Service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

[Sec. 3306(c)(17) as amended by sec. 110(f)(2), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 537)]

PAR. 30. Immediately after § 31.3306(c)(17)–1 the following is inserted:

§ 31.3306(c)(18) Statutory provisions; definitions; employment; services of certain nonresident aliens.

SEC. 3306. *Definitions.* * * *

(c) *Employment.* For purposes of this chapter, the term "employment" means * * * any service, of whatever nature, performed * * * by an employee for the person employing him * * * except—

* * * * * *

(18) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

[Sec. 3306(c)(18) as added by sec. 110(f)(3), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 537)]

§ 31.3306(c)(18)–1 Services of certain nonresident aliens.

(a)(1) Services performed after 1961 by a nonresident alien individual who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, are excepted from employment if the services are performed to carry out a purpose for which the individual was admitted. For purposes of this section an alien individual who is temporarily present in the United States as a nonimmigrant under such subparagraph (F) or (J) is deemed to be a nonresident alien individual. A nonresident alien individual who is temporarily present in the United States as a nonimmigrant under such subparagraph (J) includes an alien individual admitted to the United States as an "exchange visitor" under section 201 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1446).

(2) If services are performed by a nonresident alien individual's alien spouse or minor child, who is temporarily present in the United States as a non-immigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, the services are not deemed for purposes of this section to be performed to carry out a purpose for which such individual was admitted. The services of such spouse or child are excepted from employment under this section only if the spouse or child was admitted for a purpose specified in such subparagraph (F) or (J) and if the services are performed to carry out such purpose.

(b) Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101), as amended, provides, in part, as follows:

SEC. 101. *Definitions.* [Immigration and Nationality Act (66 Stat. 166)]

(a) As used in this chapter—* * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

* * * * *

(F) (i) An alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by him and approved by the Attorney General after consultation with the Office of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

* * * * *

(J) An alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training, and the alien spouse and minor children of any such alien if accompanying him or following to join him.

* * * * *

[Sec. 101, Immigration and Nationality Act, as amended by sec. 101, Act of June 27, 1952, 66 Stat. 166; sec. 109, Act of Sept. 21, 1961, 75 Stat. 534]

PAR. 31. Section 31.3306(j) is amended to read as follows:

§ 31.3306(j) Statutory provisions; definitions; State, United States, and citizen.

SEC. 3306. *Definitions.* * * *

(j) *State, United States, and citizen.* For purposes of this chapter—

(1) *State.* The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(2) *United States.* The term "United States" when used in a geographical sense includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered for purposes of this section, as a citizen of the United States.

[Sec. 3306(j) as amended by sec. 22(a), Alaska Omnibus Act (73 Stat. 146); sec. 18(d), Hawaii Omnibus Act (74 Stat. 416); sec. 543(a), Social Security Amendments 1960]

PAR. 32. Immediately after § 31.3306(j) the following is inserted:

§ 31.3306(j)–1 State, United States, and citizen.

(a) When used in the regulations in this subpart, the term "State" includes the District of Columbia, the Territories of Alaska and Hawaii before their admission as States, and (when used with respect to remuneration paid after 1960 for services performed after 1960) the Commonwealth of Puerto Rico.

(b) When used in the regulations in this subpart, the term "United States", when used in a geographical sense, means the several States (including the Territories of Alaska and Hawaii before their admission as States), and the District of Columbia. When used in the regulations in this subpart with respect to remuneration paid after 1960 for services performed after 1960, the term "United States" also includes the Commonwealth of Puerto Rico when the term is used in a geographical sense, and the term "citizen of the United States" includes a citizen of the Commonwealth of Puerto Rico.

PAR. 33. Section 31.3306(m) is amended to read as follows:

§ 31.3306(m) Statutory provisions; definitions; American vessel and aircraft.

SEC. 3306. *Definitions.* * * *

(m) *American vessel and aircraft.* For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

[Sec. 3306(m) as amended by sec. 532(c), Social Security Amendments 1960]

PAR. 34. Section 31.3306(m)–1 is amended to read as follows:

§ 31.3306(m)–1 American vessel and aircraft.

(a) The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State. (For provisions relating to the terms "State" and "citizen", see § 31.3306(j)–1.)

(b) The term "American aircraft" means any aircraft registered under the laws of the United States.

(c) For provisions relating to services performed outside the United States on or in connection with an American vessel or American aircraft, see paragraph (c) of § 31.3306(c)–2.

PAR. 35. Section 31.3308 is redesignated as § 31.3309 and as so redesignated reads as follows:

§ 31.3309 Statutory provisions; short title.

SEC. 3309. *Short title.* This chapter may be cited as the "Federal Unemployment Tax Act."

[Sec. 3309 as redesignated by sec. 531(d)(1), Social Security Amendments 1960]

PAR. 36. Immediately after § 31.3307–1 the following is inserted:

§ 31.3308 Statutory provisions; instrumentalities of the United States.

SEC. 3308. *Instrumentalities of the United States.* Notwithstanding any other provision of law (whether enacted before or after enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

[Sec. 3308 as added by sec. 531(d)(1), Social Security Amendments 1960]

SEC. 531. [*Social Security Amendments of 1960*] * * *

(g) Notwithstanding section 203(b) of the Farm Credit Act of 1959 [73 Stat. 390], sections 3305(b), 3306(c)(6), and 3308 of the Internal Revenue Code of 1954 * * * shall be applicable, according to their terms, to the Federal land banks, Federal intermediate credit banks, and banks for cooperatives.

§ 31.3308–1 Instrumentalities of the United States specifically exempted from tax imposed by section 3301.

Section 3308 makes ineffectual as to the tax imposed by section 3301 (with respect to remuneration paid after 1961, for services performed after 1961) those provisions of law which grant to an instrumentality of the United States in exemption from taxation, unless such provisions grant a specific exemption from the tax imposed by section 3301 by an express reference to such section or the corresponding section of prior law. Thus, the general exemptions from Federal taxation granted by various statutes to certain instrumentalities of the United States without specific reference to the tax imposed by section 3301 or the corresponding section of prior law are rendered inoperative insofar as such exemptions relate to the tax imposed by section 3301. For provisions relating to the exception from employment of services performed in the employ of an instrumentality of the United States specifically exempted from the tax imposed by section 3301, see § 31.3306(c)(6)–1.

PAR. 37. Section 31.6001–4 is amended by revising paragraph (b) to read as follows:

§ 31.6001–4 Additional records under Federal Unemployment Tax Act.

* * * * *

(b) *Records of persons who are not employers.* Any person who employs individuals in employment (see §§ 31.3306(c)–1 to 31.3306(c)–3, inclusive) during any calendar year but who considers that he is not an employer subject to the tax (see § 31.3306(a)–1) shall, with respect to each such year, be prepared to establish by proper records (including, where necessary, records of the number of employees employed each day) that he is not an employer subject to the tax.

[F.R. Doc. 63–3397; Filed, Apr. 1, 1963; 8:49 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1047]

[Docket No. AO–33–A–28]

MILK IN FORT WAYNE, INDIANA, MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Fort Wayne, Indiana, marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Aggriculture, Washington 25, D.C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order as amended, were formulated, was conducted at Fort Wayne, Indiana, on March 5, 1963, pursuant to notice thereof which was issued February 21, 1963 (27 F.R. 1879).

The material issue on the record of the hearing relates to the Class I price.

Findings and conclusions. The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

The present Class I price of $1.20 over the basic formula price should be continued through December 31, 1964. This will insure proper alignment of the Fort Wayne Class I price with that of Indianapolis and other nearby markets until it can be reviewed at a future hearing.

The present Class I pricing became effective May 1, 1961, at which time the Fort Wayne marketing area was significantly expanded. A termination date of March 31, 1963, was set to permit a review of the Class I price level after sufficient time had elapsed to accumulate data on supply-demand conditions in the expanded market. It was anticipated that consideration could then be given to automatically adjusting the Class I price in accordance with changes in the market's supply-demand conditions.

Although nearly two years of production and sales statistics are now available, these data are not sufficiently representative of the current supply-

demand conditions in the market to permit a reliable price adjustor to be developed at this time.

The supply-demand situation in the Fort Wayne market has changed significantly since the marketing area was expanded in May 1961, and is still in a state of flux. Producer milk utilized in Class I increased from an average of 63.3 percent in 1960, before expansion, to an average of 78.4 percent in 1962, after the marketing area was expanded.

These changes resulted partly from the expansion of the Fort Wayne marketing area. A number of handlers, previously regulated under the Indianapolis order, at that time became regulated by the Fort Wayne order. Such shifts changed the utilization of both markets. Effective August 1962, three additional Indiana counties were added to the Fort Wayne marketing area. This change, together with other amendments made to the Fort Wayne order at that time, helped to overcome the problem of shifting regulation between the two markets and to stabilize marketing conditions.

The most significant factor, however, is a merchandising innovation which has drastically changed the short-run supply-demand balance in the Fort Wayne market. For the past few months, a Fort Wayne handler has custom packaged milk in paper gallon containers for a number of handlers regulated under other nearby Federal orders, particularly, handlers under the Indianapolis order. A second gallon packaging machine has also been recently installed by another Fort Wayne handler who has likewise begun custom packaging for handlers under other orders. Such increased sales to other markets represented approximately 10 percent of the total Class I utilization and have improved the utilization ratio of the Fort Wayne market by 7 or 8 percentage points in recent months. It is very unlikely that such sales will continue to be made on a regular basis or in significant volume since, if the new package receives ready consumer acceptance, other order handlers will purchase their own machines and shift their source of supply. For this reason no accurate estimate of the future impact of such sales on the market's utilization can be made at this time.

The sales and procurement areas of the Fort Wayne and Indianapolis orders overlap extensively. This requires that the Class I pricing of the two orders be closely aligned. Four Indianapolis handlers regularly operate routes in the Fort Wayne market. The plant of one such handler is actually located in the Fort Wayne marketing area. Five Fort Wayne handlers also have regular route distribution in the Indianapolis marketing area.

On November 6, 1962, a recommended decision was issued which would expand the Indianapolis market to include 13 additional counties. Two of the counties proposed to be added abut the Fort Wayne marketing area. Although the proposed expansion, if adopted, is not expected to greatly affect the supply-demand relationship of the Fort Wayne market, it could change the relative utilization of the two markets. In this same decision, it was recommended that the Indianapolis Class I price be extended for a period of 18 months with no supply-demand adjustment.

This close relationship between the two markets is a further reason for omitting a supply-demand adjustment for the Fort Wayne order at this time. Such an adjustment could result in severe misalignment of prices between the Fort Wayne and Indianapolis markets as well as other nearby markets. Such a situation could disrupt the orderly marketing of milk. Furthermore, as previously indicated, any supply-demand adjustment based on historical data would not be sufficiently responsive to the dynamic supply-demand situation currently prevailing in the Fort Wayne market.

The present Fort Wayne Class I price, therefore, should be extended for an additional 21-month period. Such an extension will permit review of the Fort Wayne Class I price at approximately the same time as that of the Indianapolis market, in the third or fourth quarter of 1964.

The Class I price provided herein is such that an adequate but not excessive supply of milk for the Fort Wayne market will be maintained during the interim period. At the same time this price level will continue the necessary price alignment with other markets in the region, particularly the Indianapolis market.

Rulings on proposed findings and conclusions. No briefs were filed on behalf of interested parties.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order as amended regulating the handling of milk in the Fort Wayne, Indiana, marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

Section 1047.51(a) is revised to read as follows:

§ 1047.51 Class prices.

* * * * *

(a) *Class I milk price.* Through December 31, 1964, the price for Class I milk of 3.5 percent butterfat content shall be the basic formula price for the preceding month plus $1.20; and

Signed at Washington, D.C., on March 27, 1963.

JOHN P. DUNCAN, Jr.,
Assistant Secretary.

[F.R. Doc. 63-3385; Filed, Apr. 1, 1963; 8:47 a.m.]

[9 CFR Part 201]

PACKERS AND STOCKYARDS

Proposal to Define "Selling Service" or "Selling Commission"

Pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 et seq.), and section 4 of the Administrative Procedure Act (5 U.S.C. 1003), notice is hereby given that consideration is being given as to whether an amendment should be made in § 201.17 of the regulations under the Packers and Stockyards Act (9 CFR Part 201) to include a definition of "Selling Service" or "Selling Commission" as such term shall be used in schedules of rates and charges filed by market agencies under the Packers and Stockyards Act.

Any interested person who wishes to submit proposals and the reasons therefor or comments with respect to this matter may do so by filing them with the Director, Packers and Stockyards Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than May 15, 1963. Copies of the present regulations may be obtained on request from the Director. If it is decided after consideration of all proposals and comments received pursuant to this notice and consideration of all other relevant matters that the regulation should be so amended, a notice of proposed rule-making will be published in the FEDERAL REGISTER setting forth any specific proposed amendment. At that time all interested persons will have an opportunity

to submit their views on such proposed amendment.

Done at Washington, D.C., this 25th day of March 1963.

CLARENCE H. GIRARD,
Deputy Administrator,
Agricultural Marketing Service.

[F.R. Doc. 63-3384; Filed, Apr. 1, 1963; 8:47 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 71 [New]]

[Airspace Docket No. 62-CE-79]

CONTROL ZONE AND TRANSITION AREA

Proposed Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 11.65), notice is hereby given that the Federal Aviation Agency is considering amendments to §§ 71.171 and 71.181 of the Federal Aviation Regulations, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a control zone and a transition area at Bemidji, Minn. The proposed control zone would be designated from 0500 to 2100 hours local time, daily, within a 4-mile radius of the Bemidji Municipal Airport (latitude 47°30'35" N., longitude 94°55'50" W.) and within 2 miles either side of the 136° True radial of a VOR which became operational on February 3, 1963, in the vicinity of Bemidji, Minn., at latitude 47°34'33" N., longitude 95°01'-25" W., extending from the 4-mile radius zone to the VOR. The portion 10 miles southeast of and parallel to the Bemidji VOR 024° and 204° True radials would be excluded to permit aircraft not equipped with radios to operate from the two seaplane bases located east of Bemidji with minimum restriction.

This control zone would provide protection for aircraft executing prescribed Bemidji Municipal Airport instrument arrival and departure procedures. The time of designation would coincide with the hours of operation of the aviation weather reporting service to be provided by North Central Airlines.

The proposed transition area would be designated to extend upward from 700 feet above the surface within a 6-mile radius of the Bemidji Municipal Airport and within 2 miles either side of the Bemidji VOR 316° True radial extending from the 6-mile radius area to 8 miles northwest of the VOR, and upward from 1,200 feet above the surface within 5 miles northeast and 8 miles southwest of the Bemidji VOR 136° and 316° True radials extending from 4 miles southeast to 13 miles northwest of the VOR. The portion with the 700-foot floor would provide protection for aircraft executing prescribed Bemidji Municipal Airport instrument arrival and departure procedures during the period of time the Bemidji control zone would not be effective. The portion extending upward from 1,200 feet would provide protection for aircraft executing the VOR holding pattern procedure to be prescribed at the Bemidji Municipal Airport.

Communications within the proposed transition area and control zone would be provided by remoted receiver and voice facilities controlled by the FAA's Hibbing, Minn., Flight Service Station.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A-103, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on March 27, 1963.

CLIFFORD P. BURTON,
Chief, Airspace Utilization Division.

[F.R. Doc. 63-3360; Filed, Apr. 1, 1963; 8:45 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 62-WE-125]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 11.65), notice is hereby given that the Federal Aviation Agency is considering amendments to Part 71 [New] of the Federal Aviation Regulations, the substance of which is stated below.

The following controlled airspace is presently designated in the El Centro, Calif., terminal area:

1. The El Centro control zone is designated within a 5-mile radius of NAF El Centro (latitude 32°49'20" N., longitude 115°40'15" W.); within a 5-mile radius of Imperial County Airport, El Centro, Calif. (latitude 32°50'10" N., longitude 115°34'30" W.), and within 2 miles either side of the El Centro VORTAC 327° True radial extending from the Imperial County 5-mile radius zone to the VORTAC.

2. The El Centro transition area is designated as that airspace extending upward from 1,200 feet above the surface bounded on the south by the United States/Mexican border, on the west by longitude 115°43'00" W., on the north by latitude 32°52'00" N., and on the east by longitude 115°15'00" W., excluding the portion within R-2512 and the airspace within Federal airways.

The El Centro control zone and transition area as presently designated do not provide adequate protection for aircraft executing prescribed instrument approach and departure procedures at NAF El Centro. In addition, additional controlled airspace is required for the protection of aircraft executing prescribed holding pattern procedures in the El Centro terminal area. To provide this protection the Federal Aviation Agency has under consideration the following airspace actions:

1. Alter the El Centro control zone by redesignating it to comprise that airspace within a 5-mile radius of NAF El Centro (latitude 32°49'20" N., longitude 115°40'15" W.); within a 5-mile radius of El Centro (Imperial County) Airport (latitude 32°50'10" N., longitude 115°-34'30" W.); within 2 miles either side of the El Centro VORTAC 297° True radial extending from the NAF El Centro 5-mile radius zone to the VORTAC, and within 2 miles either side of the El Centro VORTAC 327° True radial extending from the Imperial County 5-mile radius zone to the VORTAC.

2. Alter the El Centro transition area by redesignating it to comprise that airspace extending upward from 1,200 feet above the surface within 8 miles either side of the El Centro VORTAC 088° and 268° True radials extending from 15 miles east to 15 miles west of the VORTAC and within 15 miles west and 5 miles east of the El Centro VORTAC 360° True radial extending from the VORTAC to 25 miles north of the VORTAC, excluding the portions within R-2510 and R-2512 and the area under the jurisdiction of Mexico.

3. The floor of the airways that traverse this transition area would automatically coincide with the floor of the transition area.

Specific details of the changes in procedures and minimum instrument flight rules altitudes that would be required may be examined by contacting the Chief, Airspace Utilization Branch, Air Traffic Division, Western Region, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 9, Calif.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Western Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 9, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed

amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A–103, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on March 27, 1963.

CLIFFORD P. BURTON,
Chief, Airspace Utilization Division.

[F.R. Doc. 63–3358; Filed, Apr. 1, 1963; 8:45 a.m.]

[14 CFR Part 71 [New]]

[Airspace Docket No. 63–CE–16]

FEDERAL AIRWAYS AND ASSOCIATED CONTROL AREAS

Proposed Alteration

Pursuant to the authority delegated to me by Administrator (14 CFR 11.65 [New]), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 71 of the Federal Aviation Regulations, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a VOR Federal airway and its control areas from the Timmerman, Wis., VOR via the intersection of the Timmerman 322° and the Dells, Wis., VOR 097° True radials to the Randolph Intersection (intersection of the Dells 097° and the Milwaukee, Wis., 307° True radials). This airway would be reduced to an 8-mile wide airway from Timmerman to the intersection of the Timmerman 322° and the Dells 097° True radials. From this intersection to 45 nautical miles from Dells this airway would be expanded to a 14-mile wide airway.

This airway would be numbered VOR Federal airway No. 82 which presently extends from Minneapolis, Minn., to Nodine, Minn. Additionally, Victor 82 would be designated from Nodine to the Randolph Intersection to join the new segment from Timmerman and would coincide with VOR Federal airway No. 170 from Nodine to the Randolph Intersection.

The designation of this airway from Timmerman to the Randolph Intersection would provide controlled airspace for northwestbound departures from the Milwaukee terminal area. The reduced width of this airway segment from Timmerman to the intersection of the Timmerman 322° and the Dells 097° True radials would permit simultaneous use of the airway and the Milwaukee holding pattern. The expanded width of this airway segment from this intersection to 45 nautical miles from Dells would provide for additional controlled airspace for aircraft operating along this airway while at a distance greater than 45 nautical miles from the Dells facility. The numbering of this new airway as Victor 82 and continuing it over Victor 170 to Nodine would provide a single numbered airway to Minneapolis for air traffic control clearance simplification.

The control areas of this proposed extension of Victor 82 would extend from 700 feet above the surface to the base of the continental control area. Separate actions would be initiated on an area basis to implement Amendment 60–21 to Part 60 of the Civil Air Regulations.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Central Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A–103, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on March 27, 1963.

CLIFFORD P. BURTON,
Chief, Airspace Utilization Division.

[F.R. Doc. 63–3359; Filed, Apr. 1, 1963; 8:45 a.m.]

[14 CFR Part 73]

[Airspace Docket No. 63–EA–1]

RESTRICTED AREA

Proposed Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 11.65), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 73.52 of the Federal Aviation Regulations, the substance of which is stated below.

The Federal Aviation Agency is considering a proposal by the Department of the Army to extend the hours of use of the West Point, N.Y., Restricted Area R–5206 from "0600 to 1600 e.s.t., Monday through Saturday, May 1 through August 31," to "0600 to 2400 e.s.t., May 1 through August 31." The Department of the Army has requested this change to permit night firing by the United States Corps of Cadets and to allow National Guard and Army Reserve units to utilize the area on Sundays.

No other changes on this restricted area are contemplated.

If this action is taken, the time of designation of R–5206, West Point, N.Y., would be described as "0600 to 2400 e.s.t., May 1 through August 31."

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Assistant Administrator, Eastern Region, Attn: Chief, Air Traffic Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room A–103, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on March 27, 1963.

CLIFFORD P. BURTON,
Chief, Airspace Utilization Division.

[F.R. Doc. 63–3357; Filed, Apr. 1, 1963; 8:45 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

BERKS COUNTY TRUST CO. AND REAMSTOWN EXCHANGE BANK

Notice of Report on Competitive Factors Involved in Merger Application

On February 7, 1963, the Board of Directors of the Federal Deposit Insurance Corporation, pursuant to 12 U.S.C. 1828(c), requested that the Comptroller of the Currency report on the competitive factors involved in the proposed merger of the $3.5 million Reamstown Exchange Bank, Reamstown, Pennsylvania, into the Berks County Trust Company, Reading, Pennsylvania.

On March 15, 1963, the Comptroller of the Currency reported the presence of Berks County Trust Company in Reamstown would have an adverse competitive effect upon the much smaller banks in the area which would not be offset by any present or reasonably foreseeable needs of the public in that area.

Copies of this report are available on request to the Comptroller of the Currency, Washington 25, D.C.

Dated: March 27, 1963.

[SEAL] A. J. FAULSTICH,
Administrative Assistant to the Comptroller of the Currency.

[F.R. Doc. 63-3396; Filed, Apr. 1, 1963; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

UTAH

Notice of Opening Unclassified Land to Small Tract Application

1. Pursuant to authority delegated to me by Bureau Order No. 684, dated August 28, 1961 (26 F.R. 8216), I hereby open the following described lands to the filing of applications on Form 4-776 in accordance with the provisions of the Act of June 1, 1938 (43 U.S.C. 682a-e), as amended, and the regulations in 43 CFR Part 257, as amended:

SALT LAKE MERIDIAN

T. 13 S., R. 18 W.,
Sec. 27, S½SW¼SW¼SE¼.
Sec. 28, S½SE¼SE¼SW¼.
T. 14 S., R. 18 W.,
Sec. 8, S½SW¼SW¼NE¼.
Sec. 9, E½NE¼SE¼NE¼.

2. The lands have not been classified for disposition as small tracts. Applications for the lands will be considered on their merits in accordance with the criteria set forth in 43 CFR 257.2.

3. Copies of the small-tract regulations and application forms may be secured from the Manager, Land Office, Bureau of Land Management, P.O. Box 777, Salt Lake City 10, Utah.

CYRIL L. JENSEN,
Acting State Director.

MARCH 26, 1963.

[F.R. Doc. 63-3374; Filed, Apr. 1, 1963; 8:47 a.m.]

CALIFORNIA

Opening Order

MARCH 26, 1963.

By virtue of the authority vested in the Secretary of the Interior by section 3 of the Act of October 5, 1962 (760 Stat. 749), and in the Director, Bureau of Land Management by 235 DM 1.1, it is ordered as follows:

Effective 15 days from and after publication of this order in the FEDERAL REGISTER, the following described public lands are restored to the operation of the public land laws, subject to valid existing rights and equitable claims, the requirements of applicable laws, rules and regulations and the provisions of any existing withdrawals:

SAN BERNARDINO MERIDIAN

T. 9 N., R. 23 E.,
Sec. 30, NE¼SW¼SE¼SW¼ and NW¼SE¼SE¼SW¼.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Riverside, California.

KARL S. LANDSTROM,
Director.

[F.R. Doc. 63-3375; Filed, Apr. 1, 1963; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

[Department Order 109 (Rev.), Amdt. 1]

BUREAU OF PUBLIC ROADS

The material appearing at 27 FR 11824-11825 of November 30, 1962 is amended as follows:

Section 2.01 5 of the Organization and Function Supplement to Department Order No. 109 (Revised) of November 14, 1962, is hereby amended to read as follows:

SECTION 2. *Organization.* 5. Office of Research and Development.

(1) Materials Research Division.
(2) Structural Research Division.
(3) Traffic Systems Research Division.
(4) Hydraulic Research Division.
(5) Economic Research Division.
(6) Production Development Division.
(7) Methods Development Division.
(8) Electronic Development Division.

Effective date. March 18, 1963.

[SEAL] HERBERT W. KLOTZ,
Assistant Secretary for Administration.

[F.R. Doc. 63-3389; Filed, Apr. 1, 1963; 8:48 a.m.]

[Department Order 186]

ASSISTANT SECRETARY OF COMMERCE FOR ECONOMIC AFFAIRS

Designation of Authority

The following order was issued by the Secretary of Commerce on March 11, 1963. This material supersedes the material appearing at 23 F.R. 8940-8941 of November 15, 1958.

SECTION 1. *Purpose.* The purpose of this order is to establish the positon of Assistant Secretary of Commerce for Economic Affairs and to prescribe the scope of authority and the duties and responsibilities of the Assistant Secretary of Commerce for Economic Affairs.

SEC. 2. *Administrative Designation.* There is hereby established the position of Assistant Secretary of Commerce for Economic Affairs.

SEC. 3. *Scope of Authority.* The Assistant Secretary for Economic Affairs shall exercise policy direction and general supervision over the Bureau of the Census and the Office of Business Economics.

SEC. 4. *Duties and Responsibilities.* The Assistant Secretary for Economic Affairs shall serve as the principal adviser to the Secretary on broad, long-range economic matters. He shall serve also as adviser to other Departmental officials with respect to such matters, in which capacity he shall keep under review economic policy positions and recommendations. In the discharge of his duties and responsibilities he shall:

1. Coordinate and develop the economic research and statistical programs in the Department; and coordinate these programs with related programs in other agencies of the Federal Government; and

2. Serve as the Department's liaison with the Council of Economic Advisers and represent the Department on appropriate top level economic policy committees.

SEC. 5. *Deputy Assistant Secretary of Commerce for Economic Affairs.* The Deputy Assistant Secretary of Commerce for Economic Affairs shall be the principal assistant to the Assistant Secretary of Commerce for Economic Affairs and shall assume the full responsibilities of

the Assistant Secretary during the latter's absence.

Effective date. March 11, 1963.

[SEAL] HERBERT W. KLOTZ,
Assistant Secretary for Administration.

[F.R. Doc. 63-3390; Filed, Apr. 1, 1963; 8:48 a.m.]

HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

ACTING ASSISTANT ADMINISTRATOR (TRANSPORTATION)

Designation

The officer appointed to the position of Deputy Assistant Administrator (Transportation) is hereby designated to serve as Acting Assistant Administrator (Transportation), during the absence of the Assistant Administrator (Transportation), with all the powers, functions, and duties delegated or assigned to the Assistant Administrator (Transportation).

In the absence of the Deputy Assistant Administrator (Transportation), David J. Speck, Attorney-Adviser, Office of General Counsel, is hereby designated to serve as Acting Assistant Administrator (Transportation) with all the powers, functions, and duties delegated or assigned to the Assistant Administrator (Transportation).

This designation supersedes the designation effective December 13, 1962 (27 F.R. 12494, 12/18/62).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c)

Effective as of the 28th day of March 1963.

[SEAL] ROBERT C. WEAVER,
Housing and Home Finance Administrator.

[F.R. Doc. 63-3386; Filed, Apr. 1, 1963; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

CORN PRODUCTS CO.

Notice of Filing of Petition Regarding Food Additive; Industrial Starch—Modified

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition (FAP 377) has been filed by Corn Products Company, 717 Fifth Avenue, New York 22, New York, proposing the amendment of § 121.2506 *Industrial starch—modified* to provide for the safe use of industrial starch modified by treatment with not more than 5.0 percent of 2,3-epoxypropyltrimethyl-ammonium chloride.

Dated: March 26, 1963.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 63-3392; Filed, Apr. 1, 1963; 8:48 a.m.]

SWIFT AND CO. ET AL.

Notice of Filing of Petition for Food Additives; Defoaming Agents

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that petitions (FAP 423, 424, 429, and 442) have been filed by Swift and Company, Union Stock Yards, Chicago 9, Illinois, and Nopco Chemical Company, 60 Park Place, Newark 1, New Jersey, proposing the issuance of a regulation to provide for the safe use of defoaming agents in the processing of beet sugar or yeast, provided such defoaming agents are prepared from one or more of the following, subject to any prescribed limitations.

Substance	Limitation
Aluminum stearate (see § 121.1071).	
Butyl stearate	
BHA	As an antioxidant.
BHT	Do.
Dimethylpolysiloxane	
Fatty acids (see § 121.1070).	
Formaldehyde	As a preservative.
Hydroxylated lecithin (see § 121.1027).	
Isopropyl alcohol	
Mineral oil	Conforming to any specifications included in a regulation issued in Subpart D of this part or in an order extending the effective date of the food additive amendments, for use of mineral oil as a direct additive to food. Not more than 150 p.p.m. in yeast.
Oxystearin (see § 121.1016).	
Petroleum waxes	Conforming to specifications included in a regulation issued in Subpart D of this part or in an order extending the effective date of the food additive amendments, for use of petroleum waxes as a direct additive to food.
Petrolatum	Conforming to specifications included in a regulation issued in Subpart D of this part or in an order extending the effective date of the food additive amendments, for use of petrolatum as a direct additive to food.
Polyethylene glycol	Molecular weight range, 400-2,000.
Polyethylene (600) dioleate.	
Polyethylene (600) monoricinoleate.	
Polypropylene glycol	Molecular weight range, 1,200-2,500.
Polysorbate 80 (see § 121.1009).	
Potassium stearate (see § 121.1071).	
Propylene glycol mono- and diesters of fats and fatty acids (see § 121.1113).	
Soybean oil fatty acids, hydroxylated.	
Tallow, hydrogenated, oxidized, or sulfated.	
Tallow alcohol, hydrogenated.	

Dated: March 26, 1963.

J. K. KIRK,
Assistant Commissioner of Food and Drugs.

[F.R. Doc. 63-3393; Filed, Apr. 1, 1963; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 14880; FCC 63R-160]

ROCKDALE BROADCASTERS

Memorandum Opinion and Order Amending Issues

In re application of Floyd Bell and J. P. Dunklin, d/b as Rockdale Broadcasters, Rockdale, Texas, Docket No. 14880, File No. BP-15007; for construction permit.

1. The Review Board has before it an untimely petition to enlarge the issues, filed by the Broadcast Bureau, a timely opposition filed by Rockdale Broadcasters, an unauthorized and untimely supplemental opposition filed by Rockdale Broadcasters and an untimely reply filed by the Broadcast Bureau.[1] The Bureau requests addition of the following issue: To determine what efforts have been made by Rockdale Broadcasters to ascertain the program needs and interests of the area its application proposes to serve and the manner in which it proposes to meet such needs and interests.

2. Good cause for the late filing of the petition to enlarge has not been shown. The facts upon which the Bureau bases its request have been available since the Rockdale application was filed, for the Texarkana application with which it was compared was on file at that time. It is no justification to say, as the Bureau does, "we did not learn of the matter until February 6, 1963." Therefore, the petition will be denied.

3. Because of the almost total disregard of procedural rules by all concerned here, some comment respecting the other defects in addition to the lateness of the initiating petition seems warranted. Rockdale's supplemental opposition is defective on either of two grounds. If treated as a supplemental opposition, and nothing more, it is late and no good cause has been shown. It can also be treated as an additional pleading not provided for by the rules and for which no request or authorization has been made or given. Section 1.13(c) of the rules. The Bureau's reply was filed after the submission of the supplemental opposition and thus is untimely. To have been timely, it should have been filed within the prescribed time after Rockdale's February 20 opposition was submitted. Of course, procedural rules governing the filing of pleadings are not absolutes, but they serve a very useful purpose. To disre-

[1] The Bureau's petition was filed February 14, 1963; Rockdale's opposition on February 20, 1963; Rockdale's supplemental opposition on March 4, 1963; and a Bureau reply on March 8, 1963.

gard them, as here, only contributes further and unjustifiably to the delays which beset the hearing process.

4. Despite the foregoing, the Board feels compelled to add the required issue on its own motion. The facts are virtually identical to those which the Commission found justified the addition of a similar issue in Lindsay Broadcasting Company, 22 RR 805 (1961).

Accordingly, it is ordered, This 25th day of March 1963, That the Bureau's petition to enlarge issues is denied, Rockdale's supplemental opposition and the Bureau's reply are dismissed, and, on the Board's own motion, the issues are enlarged by addition of the following issue: To determine what efforts have been made by Rockdale Broadcasters to ascertain the program needs and interests of the area its application proposes to serve and the manner in which it proposes to meet such needs and interests.

Released: March 28, 1963.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3412; Filed, Apr. 1, 1963; 8:51 a.m.]

[Docket Nos. 14815-14817; FCC 63M-400]

WILLIAM S. COOK ET AL.

Order re Procedural Dates

In re applications of William S. Cook, Colorado Springs, Colorado, Docket No. 14815, File No. BP-14198; Charles W. Stone (KCHY), Cheyenne, Wyoming, Docket No. 14816, File No. BP-15080; Frances C. Gaguine and Bernice Schwartz, d/b as Denver Area Broadcasters (KDAB), Arvada, Colorado, Docket No. 14817, File No. BMP-9789; for construction permits.

A prehearing conference in the above-entitled matter having been held on March 27, 1963, and it appearing from the record made therein that certain agreements were reached and certain rulings made by the Hearing Examiner which should be formalized by order; and that the matters discussed in the prehearing conference permit the disposition of the Motion for Extension filed by Denver Area Broadcasters on March 22, 1963;

It is ordered, This 27th day of March 1963, that:

(1) For the purpose of hearing, the above applications will be split into two groups: Group A consisting of William S. Cook and Charles W. Stone (KCHY); and Group B consisting of Frances C. Gaguine and Bernice Schwartz, d/b as Denver Area Broadcasters (KDAB);

(2) The following schedule shall obtain with respect to Group A:

(a) Final exchange of exhibits—March 27, 1963.

(b) Notification of witnesses—April 11, 1963.

(c) Commencement of hearing—April 18, 1963 at 10:00 a.m.

(3) The following schedule shall obtain with respect to Group B, and shall govern all issues presently designated which are pertinent to Group B:

(a) Preliminary exchange of exhibits—April 29, 1963.

(b) Final exchange of exhibits—May 6, 1963.

(c) Notification of witnesses—May 13, 1963.

(d) Commencement of hearing—May 20, 1963 at 10:00 a.m.

(4) Action on the Joint Petition for Serverance now pending shall be deferred until after the conclusion of the hearing session of April 18, 1963;

It is further ordered, That the Motion for Extension filed by Denver Area Broadcasters on March 22, 1963, is granted to the extent hereinabove indicated.

Released: March 28, 1963.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3413; Filed, Apr. 1, 1963; 8:51 a.m.]

[Docket No. 14692; FCC 63M-397]

PINELLAS RADIO CO.

Order Continuing Hearing

In re application of William D. Mangold, d/b as Pinellas Radio Company, Pinellas Park, Florida, Docket No. 14692, File No. BP-14387; for construction permit.

The Hearing Examiner has for consideration the informal request of the applicant for an extension of the procedural dates herein, together with the applicant's statement that all other parties hereto have consented to a grant of the requested relief;

It is ordered, This 27 day of March 1963, that:

(1) The date for the exchange of the exhibits referred to in the Hearing Examiner's Order of February 7, 1963, is extended from March 27, 1963, to April 16, 1963;

(2) In the event the applicant exchanges any exhibits, and any other party wishes to call for cross-examination any person responsible for the preparation thereof, notification shall be given on or before April 22, 1963;

It is further ordered, That the hearing now scheduled to commence on April 10, 1963, is continued to April 24, 1963, commencing at 10:00 a.m. in the offices of the Commission at Washington, D.C.

Released: March 28, 1963.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3414; Filed, Apr. 1, 1963; 8:51 a.m.]

[Docket No. 14880; FCC 63M-398]

ROCKDALE BROADCASTERS

Order Scheduling Prehearing Conference

In re application of Floyd Bell and J. P. Dunklin, d/b as Rockdale Broadcasters, Rockdale, Texas, Docket No. 14880, File No. BP-15007; for construction permit.

It is ordered, This 27th day of March 1963, pursuant to the request of the parties hereto, that a further prehearing conference will be held on April 3, 1963, commencing at 9:00 a.m. in the offices of the Commission at Washington, D.C.

Released: March 28, 1963.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 63-3415; Filed, Apr. 1, 1963; 8:51 a.m.]

FEDERAL MARITIME COMMISSION

[No. 1092]

LATIN AMERICA/PACIFIC COAST STEAMSHIP CONFERENCE

Notice of Filing of Modification of Proposed Receivers' Rate Agreement and Proposed Shippers' Rate Agreement

Notice is hereby given that the parties to Agreement 8660, proposing the establishment of the Latin America/Pacific Coast Conference have filed modification to their Shippers' and Receivers' Rate Agreements, which agreements are intended for use by the Latin America/Pacific Coast Conference upon approval of the Commission under sections 14(b) and 15 of the Shipping Act, 1916.

The parties desire to modify the Receivers' Rate Agreement by amending the heading to read as follows: "From all ports in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Republic of Panama, Canal Zone ports of Balboa and Cristobal, and on Green Coffee only, from all ports on the East of Colombia and Pacific Coast ports of Mexico."

and revising Article 2 to read: "This Agreement covers the transportation by water of goods from all ports in Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Republic of Panama, Canal Zone ports of Balboa and Cristobal, and on Green Coffee only, from all ports on the East Coast of Colombia and Pacific Coast ports of Mexico to Pacific Coast ports of the United States and Canada."

and by amending Article 4 to read: "The carriers agree to maintain rates of freight for the benefit of the receiver lower than the ordinary rates on all commodities covered by this Agreement. In the absence of an accomplished Agreement, the ordinary rate shall be 15 percent higher than the Contract (reduced) Rate."

The shippers' Rate Agreement is modified by amending Article 4 to read: "The carriers agree to maintain rates of freight for the benefit of the shipper lower than the ordinary rates on all commodities covered by this Agreement. In the absence of an accomplished Agreement, the ordinary rate shall be 15 percent higher than the Contract (reduced) Rate."

Notice of the institution of this proceeding appeared in the FEDERAL REGISTER of March 22, 1963 (28 F.R. 2875–76) and prehearing conference has been scheduled to be held at San Francisco, California, before Edward C. Johnson, Presiding Examiner, beginning at 10:00 a.m., on April 4, 1963, in Room 228, Old Mint Building, Fifth and Mission Streets.

All persons (including individuals, corporations, associations, firms, partnerships and public bodies) having an interest in Agreement 8660 and the "Shippers' Rate Agreement" and the "Receivers' Rate Agreement" proposed to be used in connection therewith, as modified above, and desiring to intervene in Docket No. 1092 (if they have not already intervened), should immediately file petitions for leave to intervene and serve copies thereof on respondents, with fifteen (15) copies to the Commission.

By order of the Commission.

THOMAS LISI,
Secretary.

MARCH 28, 1963.

[F.R. Doc. 63-3402; Filed, Apr. 1, 1963; 8:49 a.m.]

COPELAND SHIPPING, INC., ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

Agreement No. FF–31 between Copeland Shipping, Inc. of New York and William A. Rogers, Inc. of Chicago, Illinois, is a non-exclusive, cooperative working arrangement under which the parties may perform freight forwarder functions for each other, the party performing the service retaining $7.50 per shipment and $5.00 for preparation of consular invoices. The party performing the service will give 100 percent of the ocean brokerage to the other party.

Agreement No. FF–63 between Ralph Valls of Corpus Christi, Texas and Alltransport Incorporated of New York, New York, is a non-exclusive cooperative working arrangement under which the parties may perform freight forwarder functions for each other, dividing forwarding fees and ocean brokerage as agreed on each transaction.

Agreement No. FF–64 between Geo. S. Bush & Co., Inc. of Seattle, Washington and Albury & Company of Miami, Florida, is a non-exclusive, cooperative working arrangement under which the parties may perform freight forwarder functions for each other, dividing forwarding fees on each transaction. Ocean brokerage will be divided as agreed, based upon the extent of the contribution if any in obtaining and handling of the freight made by the party seeking participation.

Interested persons may inspect these agreements and obtain copies thereof at the Bureau of Domestic Regulations, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,
New York 4, N.Y.

Room 333, Federal Office Building South
600 South Street,
New Orleans 12, La.
Mail address: P.O. Box 30550, Lafayette Station, New Orleans 30, La.

180 New Montgomery Street,
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within twenty days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements and their approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 28, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 63-3403; Filed, Apr. 1, 1963; 8:50 a.m.]

WM. H. MULLER SHIPPING CORP. ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

Wm. H. Muller Shipping Corp., New York, N.Y.	No. FF–43
F. B. Vandegrift & Co., Philadelphia, Pa.	No. FF–43
Guy B. Barham Co., Los Angeles, Calif	No. FF–53
Nordstrom Freighting Corp., New York, N.Y.	No. FF–53

Both of these agreements have similar terms. They are non-exclusive, cooperative working arrangements under which the parties may perform forwarding services for each other. Forwarding fees and ocean freight brokerage will be divided as agreed on each transaction.

Interested persons may inspect these agreements and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,
New York 4, N.Y.

180 New Montgomery Street,
San Francisco, Calif.

Room 333, Federal Office Building, South,
600 South Street,
New Orleans 12, La.
Mail address: P.O. Box 30550, Lafayette Station, New Orleans 30, La.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within twenty days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 28, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 63-3404; Filed, Apr. 1, 1963; 8:50 a.m.]

MEMBER LINES OF NORTH PACIFIC COAST-EUROPE PASSENGER CONFERENCE

Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement 8460–2, between the member lines of the North Pacific Coast-Europe Passenger Conference, modifies the approved agreement of that conference (Agreement 8460) in the trades:

1. From Pacific Coast ports of the United States or Canada to ports of the United Kingdom, Ireland, Scandinavia, Continental and Mediterranean Europe, and the West Indies via the Panama Canal.

2. Between Pacific Coast ports of the United States and the Dominion of Canada and the West Coast ports of Central America and the ports of Balboa and Cristobal, Canal Zone, and

3. Between Pacific Coast ports of the United States and Pacific Coast ports of Canada.

This modification amends section III of the basic agreement's rules and regulations by adding thereto paragraph 6 providing for the establishment and administration of "Inclusive Tours".

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., or may inspect a copy at the offices of the District Managers of the Commission in New York, N.Y., New Orleans, La., and San Francisco, Calif., and may submit to the Secretary, Federal Maritime Commission, Washington 25, D.C., within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 28, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 63-3405; Filed, Apr. 1, 1963; 8:50 a.m.]

WOLF AND GERBER, INC., ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Federal Maritime Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended. All parties involved were registered under our former General Order 72, have applied for licenses pursuant to section 44 of the Shipping Act, 1916, and are therefore eligible to operate as independent ocean freight forwarders.

Wolf & Gerber, Inc. of New York is party to the following agreements, the terms of which are identical. The other parties are:

James Loudon & Co., Inc., Los Angeles 13, Calif	No. FF-66
Godwin Shipping Co., Inc., Mobile, Ala	No. FF-67
John J. Moylan & Co., Los Angeles, Calif	No. FF-68
Maher & Co., New Orleans, La	No. FF-69
Wilmington Shipping Co., Wilmington, N.C	No. FF-70
M. E. Dey & Co., Inc., Milwaukee, Wis	No. FF-71
Fillette, Green & Co. of Tampa, Tampa, Fla	No. 9101
Charleston Overseas Forwarders, Inc., Charleston, S.C	No. 9102
N. D. Cunningham & Co., Inc., Mobile, Ala	No. 9103
The J. D. Richardson Co., Detroit, Mich	No. 9104
Seaway Forwarding Co., Cleveland, Ohio	No. 9106
R. G. Hobelmann & Co., Inc., Baltimore, Md	No. 9108
Cavalier Shipping Co., Inc., Norfolk, Va	No. 9109

They are nonexclusive, cooperative working arrangements under which the parties may perform forwarding services for each other, dividing forwarding fees and ocean freight brokerage as agreed on each transaction.

Interested persons may inspect these agreements and obtain copies thereof at the Bureau of Domestic Regulation, Federal Maritime Commission, Washington, D.C., or at the Commission's field offices at:

45 Broadway,
New York 4, N.Y.

Room 333, Federal Office Building South, 600 South Street,
New Orleans 12, La.
Mail address: P.O. Box 30550, Lafayette Station, New Orleans 30, La.

180 New Montgomery Street,
San Francisco, Calif.

They may submit to the Secretary, Federal Maritime Commission, Washington, D.C., within twenty days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreements and their approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: March 28, 1963.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 63-3406; Filed, Apr. 1, 1963; 8:50 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-5471, etc.]

ALABAMA-TENNESSEE NATURAL GAS CO.

Order Fixing Date for Oral Argument

MARCH 25, 1963.

By order issued October 12, 1962, we postponed oral argument in these proceedings on the issues designated (1) the treatment to be accorded liberalized depreciation deductions in the computation of income taxes, and (2) the treatment of accumulated deferred taxes in the determination of rate of return. Opinion No. 360, issued June 13, 1962, in these proceedings, reserved these issues for future reconsideration with the proviso that our determination thereon would be prospective only.

The order issued October 12, 1962, referred to the decision issued September 27, 1962, by the United States Court of Appeals for the District of Columbia Circuit in Panhandle Eastern Pipeline Company v. F.P.C., No. 16,479, and noted that some of the language of the majority opinion in that case might be viewed as a limitation on the broad range of choice respecting these issues to which our order of June 1, 1962, was directed. On March 15, 1963, after rehearing en banc, the Court of Appeals withdrew and superseded the aforementioned decision of September 27, 1962, and by a new opinion affirmed the Commission's decision in the Panhandle case (25 F.P.C. 550).

It is appropriate, under the circumstances, that the oral argument in these proceedings be rescheduled as herein provided.

The Commission orders:

(A) Oral argument on the aforementioned issues and as more fully described in our order issued June 1, 1962, herein, shall be held on May 16, 1963 at 9:30 a.m., e.d.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

(B) Any party desiring to file a supplemental brief discussing the effect of the Panhandle decision issued March 15, 1963, shall do so on or before April 15, 1962.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3361; Filed, Apr. 1, 1963; 8:45 a.m.]

[Docket No. CI62-1508]

CONTINENTAL OIL CO.

Order Fixing Hearing

MARCH 26, 1963.

On June 18, 1962, Continental Oil Company filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act as successor in interest to Berkshire Oil Company [1] to sell gas to Transcontinental Gas Pipe Line Corporation (Transco). On October 22, 1962 Continental amended its application to reflect the transfer of certain interests by Berkshire. The gas in question is produced from the North Thibodeaux Field, LaFourche Parish, Louisiana.

Continental asserts that under its agreement with Berkshire the effective date of transfer was November 2, 1961, and represents that prior to that date it had no interest in the sale and delivery of this gas to Transco.

On December 10, 1962, Continental filed an offer of settlement (and related petition) concurred or joined in by Transco, The Brooklyn Union Gas Company, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, Public Service Electric and Gas Company, and The United Gas Improvement Company. Berkshire is not a party to the offer of settlement.

Under the terms of the offer of settlement the total price would be 20.625 cents per Mcf (at 15.025 psia) [2] from and after July 1, 1962. There would be a moratorium on increased rate filings until July 1, 1967, subject, however, to the earlier outcome of the south Louisiana area rate proceeding. Continental would extend the make-up period under its take-or-pay-for clause to four years. Continental would refund to Transco $13,500 (inclusive of interest) on account of sales prior to July 1, 1962; it would also refund one hundred per cent of any excess above the settlement price received on or after July 1, 1962. The offer of settlement proposes that no interest accrue on the latter amount; but our approval should be contingent upon interest at a rate of 7 percent per annum accruing until December 31, 1962, the last day of the month in which the offer of settlement was filed.

The Commission finds: This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on April 22, 1963, at 9:30 a.m. e.s.t.; in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure in accordance with the terms of the settlement proposal filed on December 10, 1962.

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[1] Technically, Berkshire conveyed to Royal Blue Ventures, Inc., which in turn conveyed to Continental. Berkshire had theretofore been granted a certificate to make these sales in Docket No. G-13197; such certificate was judicially remanded and is the subject of litigation in Placid Oil Company, et al., Docket Nos. G-13183, et al.

[2] Inclusive of state taxes.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Continental to appear or be represented at the hearing.

(B) Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 12, 1963. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3362; Filed, Apr. 1, 1963; 8:45 a.m.]

[Docket No RI61-403]

HUMBLE OIL & REFINING CO.

Order Substituting Respondent, Accepting Successor's Undertaking, Making Rate Effective Under Undertaking, and Redesignating Proceeding

MARCH 25, 1963.

On December 12, 1962, Humble Oil & Refining Company (Humble) filed a motion to be substituted for Paul F. Barnhart (Barnhart) in the above-designated rate proceeding. In support of the motion, movant states that effective October 1, 1962, Humble acquired all of Barnhart's interest in the properties covered by Barnhart's FPC Gas Rate Schedule No. 13 to which the proceeding in Docket No. RI61-403 relates.

Humble filed on November 26, 1962, a motion requesting that the proposed increased rate,[1] suspended by Commission order issued March 24, 1961, in the above-designated proceeding until September 1, 1961, and thereafter until made effective in the manner prescribed by the Natural Gas Act, be made effective subject to refund as of October 1, 1962. Concurrently therewith, Humble submitted an agreement and undertaking to assure refund of any excess charges.

Pursuant to section 4(e) of the Natural Gas Act and § 154.102 of the Regulations thereunder, the effective date of a suspended rate is a date not earlier than the date of receipt by the Commission of a motion to make the suspended rate effective or the expiration of the suspension period, whichever is later; therefore, the effective date of the subject rate is November 26, 1962.

[1] Formerly designated as Supplement No. 3 to Barnhart's FPC Gas Rate Schedule No. 13, but by Commission letter ordered issued February 6, 1963, Barnhart's rate schedule was redesignted as Humble's FPC Gas Rate Schedule No. 320, as supplemented. By this order Humble was also granted in Docket No. CI63-689 temporary authorization to continue the sale of gas heretofore made by Barnhart pursuant to certificate authorization issued in Docket No. G-10462.

The Commission finds: It is necessary and proper in carrying out the provisions of the Natural Gas Act that Humble be substituted for Barnhart in the above-designated proceeding, that the proceeding be redesignated accordingly, that the successor's agreement and undertaking submitted by Humble be accepted for filing, and that the rate suspended in Docket No. RI61-403 be made effective subject to refund as of November 26, 1962.

The Commission orders:

(A) Humble Oil & Refining Company is substituted for Paul F. Barnhart in the proceeding in Docket No. RI61-403, and the proceeding is redesignated in the name of Humble Oil & Refining Company.

(B) The agreement and undertaking submitted by Humble Oil & Refining on November 26, 1962, to assume any and all refund obligations in this proceeding is accepted for filing.

(C) The rate, charge, and classification set forth in Supplement No. 3 to Humble's FPC Gas Rate Schedule No. 320 is effective, subject to refund, as of November 26, 1962.

(D) The effective rate set forth in Supplement No. 3 to Humble's FPC Gas Rate Schedule No. 320 shall be charged and collected commencing on November 26, 1962, subject to any further orders of the Commission in this proceeding.

(E) Humble shall comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, and the agreement and undertaking assuming the refund obligation in Docket No. RI61-403 shall remain in full force and effect until discharged by the Commission.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3363; Filed, Apr. 1, 1963; 8:46 a.m.]

[Docket Nos. G-20297, etc.]

SINCLAIR OIL & GAS COMPANY AND UNION TEXAS PETROLEUM ET AL.

Order Severing Proceeding and Fixing Date of Hearing

MARCH 26, 1963.

On December 4, 1959, Sinclair Oil & Gas Company filed in Docket No. G-20297 an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act to sell gas to Transcontinental Gas Pipe Line Corporation (Transco). Said gas is produced from gas wells in the Guidry No. 1 Unit, Lake Arthur Field, Jefferson Davis Parish, Louisiana. Sinclair owns some six percent of the working interest in such unit; Sinclair's gas is being produced and delivered to Transco by the operator, Austral Oil Company, under Austral's F.P.C. Gas Rate Schedule No. 10 and pursuant to certificate issued in Docket No. G-14164 on July 30, 1962. Texaco Inc., 28 FPC ——. That certificate order approved, among other things, Austral's offer of settlement in Docket No. G-14164; and such settlement provided for refunds in future deliveries of natural gas, rather than in cash.

On November 14, 1962, Sinclair filed a motion to approve settlement agreement. Sinclair attached to its motion letters from The United Gas Improvement Company, Philadelphia Electric Company, and Long Island Lighting Company (intervenors in the proceeding) indicating a willingness to settle in accordance with the principles approved in Texaco Inc., supra. On February 21, 1963, Transco filed a letter declaring that it had no objection to the proposed settlement and spelling out the relationship between Sinclair's proposal and the operation of the Austral settlement.

Under the terms of Sinclair's proposal, the settlement price would continue to be 20.625 cents per Mcf (at 15.025 psia), under the same terms and conditions of the Austral settlement agreement as approved in Texaco Inc., supra. Sinclair has already refunded to Austral, and Austral passed on to Transco, a cash refund (including interest) of $20,055.60. Since the Sinclair proposal is so closely related to the Austral settlement, Sinclair should include a copy of each offer of settlement and of our order of July 30, 1962, in Texaco Inc., supra, approving Austral's offer, as supplements to its rate schedule herein.

This matter was previously consolidated with Union Texas Petroleum, et al., Docket Nos. G-13221, et al. by order issued December 31, 1962. In view of the proposed settlement this matter should be severed from said proceedings in the public interest.

The Commission further finds: This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations.

The Commission orders:

(A) The proceeding in Docket No. G-20297 is severed from the proceedings in Docket Nos. G-13221 et al.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on April 22, 1963, at 9:30 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure in accordance with the terms of the settlement proposal filed on November 14, 1962. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Sinclair to appear or be represented at the hearing.

(C) Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate

decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3364; Filed, Apr. 1, 1963; 8:46 a.m.]

[Docket No. RI61-359, etc.]

PAUL F. BARNHART ET AL. AND SOHIO PETROLEUM CO. ET AL.

Correction of Name

MARCH 7, 1963.

In the Order Joining Party as Co-Respondent, Redesignating Proceedings, Making Rate Effective Subject to Refund, Accepting an Undertaking and Requiring Filing of an Undertaking to Assure Refund of Excess Charges, issued February 18, 1963, and published in the FEDERAL REGISTER on February 26, 1963 (F.R. Doc. 63-1985; 28 F.R. 1776) change: "Sohio Oil Company" to "Sohio Petroleum Company" in the following places:

In the title of the proceeding, in column three at the top of page, in footnote 4, and in paragraphs A, B, C, D, and E of the ordering clauses.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3365; Filed, Apr. 1, 1963; 8:45 a.m.]

[Docket Nos. RI63-346, etc.]

SUN OIL CO. ET AL. AND TEXACO INC.

Order Providing for Hearings on and Suspension of Proposed Change in Rates; Correction

MARCH 13, 1963.

In the Order Providing for Hearings on and Suspension of Proposed Changes in Rates, issued February 19, 1963, and published in the FEDERAL REGISTER on February 27, 1963 (F.R. Doc. 63-2032; 28 F.R. 1814):

In Docket No. RI63-347, Texaco Inc. (Supplement No. 2 to Rate Schedule No. 288) under column headed "Proposed Increased Rate" change "12.7" to read "16.0".

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3366; Filed, Apr. 1, 1963; 8:46 a.m.]

[Docket No. RI63-297, etc.]

TEXACO INC. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates; Correction

MARCH 13, 1963.

In the Order Providing for Hearings on and Suspension of Proposed Changes in Rates, issued January 18, 1963, and published in the FEDERAL REGISTER on January 25, 1963 (F.R. Doc. 63-831; 28 F.R. 706):

In Docket No. RI63-297, Texaco Inc., under column headed "Proposed Increased Rate", change footnote "2" to read footnote "4".

In Docket No. RI63-298, J. M. Huber Corporation, under column headed "Proposed Increased Rate", change footnote "2" to read footnote "4".

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3367, Filed, Apr. 1, 1963; 8:46 a.m.]

[Docket No. CP63-102]

NORTHERN NATURAL GAS CO.

Notice of Application and Date of Hearing

MARCH 25, 1963.

Take notice that on October 22, 1962, as supplemented on December 26, 1962, Northern Natural Gas Company with its principal place of business in Omaha, Nebraska, filed in Docket No. CP63-102 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange and delivery of up to 50,000 Mcf of natural gas per day to El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant and El Paso are presently exchanging 475,000 Mcf of natural gas per day in accordance with El Paso's FPC Rate Schedule Z-1 now on file with the Commission. Certificate authority for such exchange was granted to Applicant in Docket No. G-17486 and to El Paso in Docket No. G-17854. Pursuant to the exchange, Applicant delivers gas principally at a point of interconnection at the outlet of its Plains measuring station located in Yoakum County, Texas, while El Paso returns equal volumes to Applicant principally at an interconnection at the outlet of El Paso's Dumas Compressor Station in Moore County, Texas.

Applicant and El Paso have entered into a new agreement dated August 17, 1962, providing for the exchange of 525,000 Mcf per day at 14.65 psia which means an increase in the amount of 50,000 Mcf per day of natural gas, the authority for which Applicant seeks in this application.

Applicant does not as a result of this application propose to increase its salable capacity nor does it propose any additional sales.

El Paso has filed with the Commission an application in Docket No. CP63-63 seeking a certificate of public convenience and necessity to construct certain additional facilities and to deliver exchange volumes to Applicant in accordance with the agreement dated August 17, 1962.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 1, 1963, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 19, 1963. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3368; Filed, Apr. 1, 1963; 8:45 a.m.]

[Docket No. CP63-159]

PANHANDLE EASTERN PIPE LINE CO.

Notice of Application and Date of Hearing

MARCH 26, 1963.

Take notice that on December 7, 1962, Panhandle Eastern Pipe Line Company (Applicant), a Delaware Corporation with its principal offices at One Chase Manhattan Plaza, New York, New York, and 3444 Broadway, Kansas City, Missouri, filed an application in Docket No. CP63-159, pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to transport natural gas to be sold as fuel to National Helium Corporation (National Helium) for use in its extraction plant in Seward County, Kansas, all as more fully described in the application which is on file with the Commission and open to public inspection.

Applicant represents that on October 12, 1961, National Helium entered into a contract with the United States of America providing for the sale of helium-gas mixture, pursuant to the provisions of the Helium Act (Public Law 86-777; 74 Stat. 918; 50 U.S.C. 167), and that National Helium is presently constructing a plant near Applicant's Liberal Compressor Station, in Kansas, which will extract components of Applicant's gas stream. Applicant states that it is anticipated that operations in the plant will commence early in 1963.

Applicant has entered into an agreement with National Helium providing for the delivery for processing of portions of Applicant's natural gas stream, and the redelivery thereof, less the shrinkage retained or consumed by National Helium, a portion of which is to be used by National Helium as fuel in its extraction operations and for space heating. Applicant estimates that the maximum volume

of gas which will be used for fuel on any day will be 2,000 Mcf, and that the average daily shrinkage will be 18,000 Mcf, of which 1,000 Mcf will be fuel. Annual usage is estimated to be about 6,500,000 Mcf.

Applicant states that it has ample gas supply to meet the needs of National Helium without any significant effect upon Applicant's ability to deliver necessary volumes of gas to its existing customers, and that its sales to existing customers will not be impaired because the deliveries to National Helium will be made at a point where gas from its supply sources is commingled, and prior to the entry of the gas stream into Applicant's main line transmission system.

Applicant does not propose to construct or install any facilities in conjunction with this sale.

Under the contract with National Helium, the basic price applicable to the sale of fuel gas is 35 cents per Mcf (14.65 psia).

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 6, 1963, at 10:00 a.m., e.d.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 18, 1963.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3369; Filed, Apr. 1, 1963; 8:46 a.m.]

[Docket No. E-7085]

SOUTH CAROLINA ELECTRIC & GAS CO. AND SOUTH CAROLINA GENERATING CO.

Notice of Application

MARCH 26, 1963.

Take notice that on March 15, 1963 a joint application was filed with the Federal Power Commission pursuant to section 203 of the Federal Power Act by South Carolina Electric & Gas Company (Electric & Gas Company) and South Carolina Generating Company (Generating Company), a wholly-owned subsidiary of Electric & Gas Company, seeking an order authorizing (1) Generating Company to dispose of the whole of its electric facilities and (2) Electric & Gas Company to acquire such facilities and to merge them with its own electric facilities and to assume all the outstanding liabilities of Generating Company. The applicants propose that in consideration of Generating Company transferring and conveying all its assets to Electric & Gas Company, the latter company will assume all liabilities of Generating Company and surrender for cancellation all outstanding capital stock of Generating Company. Each applicant is incorporated under the laws of the State of South Carolina and each has its principal place of business at 328 Main Street, Columbia, South Carolina. Electric & Gas Company is authorized to do business as a foreign corporation in the State of Georgia. Electric & Gas Company generates, purchases, sells, transmits and distributes electric power and energy and furnishes wholesale and retail electric service in an area in the central, southern, and southwestern sections of South Carolina, including the cities of Charleston and Columbia. All electric generating facilities of Electric & Gas Company are located in South Carolina except the Stevens Creek hydroelectric plant which is located on the Georgia side of the Savannah River. Electric & Gas Company also supplies natural gas to the public in Charleston and Columbia, South Carolina, and in other communities in the above-mentioned service area and conducts bus operations in Charleston and Columbia. Generating Company is engaged in operating its Urquhart Station, a thermelectric generating plant with an installed name plate capacity of 250 megawatts located at Beech Island, South Carolina, and in transmitting and selling that plant's entire output of electric power and energy to Georgia Power Company, E. I. duPont de Nemours as agent for the Atomic Energy Commission's Savannah River Project, and Electric & Gas Company.

Urquhart Station, together with its associated substation and 0.23 mile of transmission line, constitutes the principal asset of Generating Company. According to the application, the original cost of Generating Company's electric facilities is $41,851,619. Generating Company's outstanding liabilities consist mainly of First Mortgage Bonds 3⅞ percent Series, due 1979, in the principal amount of $17,008,000, and 4 percent Series, due 1981, in the principal amount of $6,677,000, and 4 percent Promissory Notes, due 1964, in the principal amount of $155,500. Generating Company's outstanding capital stock is comprised of 505 shares of Common Stock without par value. The application indicates that the electric facilities of Generating Company will be integrated with those of Electric & Gas Company and that inasmuch as Electric & Gas Company will assume all rights, obligations, and liabilities of Generating Company, the proposed transaction will have no effect upon existing contracts of Generating Company for the purchase, sale or interchange of electric power and energy, except the contract for the purchase of electric power and energy by Electric & Gas Company from Generating Company which will terminate upon the proposed merger of facilities. According to the application, the reasons underlying the formation of Generating Company as a separate entity to construct and operate Urquhart Station no longer exist and the operations of Generating Company can now be conducted by Electric & Gas Company with resulting economies in effort and expense through elimination of separate record keeping, duplicate reporting, separate pension plans, and related administrative and regulatory matters. The applicants represent that the proposed merger of their facilities will make it possible for Georgia Power Company and Electric & Gas Company to provide by contract for the supplying of certain electric requirements of Georgia Power Company from the entire electric system of Electric & Gas Company rather than from two units at Urquhart Station only as at present. It is also represented by the applicants that the proposed transaction will facilitate and strengthen interconnection agreements, pooling arrangements, and operations in parallel among electric utilities serving the States of South Carolina, North Carolina, Georgia, and Virginia. Generating Company will be dissolved and liquidated upon the consummation of the proposed transaction, which is subject to approval by the holders of Generating Company's First Mortgage Bonds and Promissory Notes referred to above.

Any person desiring to be heard or to make any protest with reference to said application should, on or before the 15th day of April 1963, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3371; Filed, Apr. 1, 1963; 8:46 a.m.]

[Docket No. G-10000]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Further Postponement of Hearing

MARCH 25, 1963.

Upon consideration of the request filed by the Counsel for Transcontinental Gas Pipe Line Corporation on March 21, 1963, for a further postponement of the hearing in the above-designated matter; Notice is hereby given that the hearing now scheduled for April 17, 1963, is hereby further postponed to April 22, 1963, at 10:00 a.m., e.s.t.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-3372; Filed, Apr. 1, 1963; 8:46 a.m.]

[Docket No. CI61-174, etc.]

U.S. OIL OF LOUISIANA INC., AND GRARIDGE CORPORATION ET AL.

Notice of Application, Further Consolidation and Date of Hearing

MARCH 25, 1963.

Take notice that on August 3, 1960, U.S. Oil of Louisiana Inc. (U.S. Oil), filed in Docket No. CI61-174 an applica-

tion pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continuation of the sale of natural gas heretofore authorized in John W. Mecom, Docket No. G–19516, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

U.S. Oil has acquired John W. Mecom's interest in the oil, gas and mineral leases related to the property located in the Sunrise Field, Terrebonne Parish, Louisiana, from which John W. Mecom was authorized to make sales of natural gas in interstate commerce by the Commission order of July 8, 1959, in Docket No. G–19516.

John W. Mecom was making the sales under a contract dated July 9, 1958, between John W. Mecom and United Gas Pipeline Company. U.S. Oil in its application proposes to continue the sales under the same contractual provisions and at the same rate as contained in John W. Mecom's FPC Gas Rate Schedule No. 7. The presently effective rate is 22.05 percent per Mcf, inclusive of taxes at 15.025 psia. The above-mentioned rate schedule has been redesignated U.S. Oil of Louisiana FPC Gas Rate Schedule No. 5.

U.S. Oil's application in Docket No. CI61–174 should be heard on a consolidated record with the matters in Graridge Corporation (Operator), et al., et al., Docket Nos. G–19246, et al.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, the matters in Docket No. CI61–174 will be heard on a consolidated record with the matters in Graridge Corporation (Operator), et al., et al., Docket Nos. G–19246, et al. on April 29, 1963, at 10:00 a.m. (e.d.s.t.) in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

Protests or petitions to intervene in Docket No. CI61–174 may be filed with the Federal Power Commission, Washington, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 15, 1963.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63–3373; Filed, Apr. 1, 1963; 8:46 a.m.]

FEDERAL RESERVE SYSTEM

BRENTON COMPANIES, INC.

Order Approving Application

In the matter of the application of Brenton Companies, Inc., Des Moines, Iowa, for prior approval of acquisition of shares of First National Bank of Davenport, Davenport, Iowa.

There has come before the Board of Governors, pursuant to section 3(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and § 222.4(a)(2) of Federal Reserve Regulation Y (12 CFR 222.4(a)(2)), an application by Brenton Companies, Inc., Des Moines, Iowa, for the Board's prior approval of the acquisition of 60 percent or more of the voting shares of First National Bank of Davenport, Davenport, Iowa.

As required by section 3(b) of the Act, the Board notified the Comptroller of the Currency of the receipt of the application and requested his views. The comptroller recommended approval of the application.

A notice of receipt of application was published in the FEDERAL REGISTER on January 15, 1963 (28 F.R. 386), affording opportunity for submission of comments and views regarding the proposed acquisition. The time provided by the notice for filing comments and views has expired and the matter has been considered fully by the Board.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that the said application be and hereby is granted, and the acquisition by Applicant of 60 percent or more of the voting shares of First National Bank of Davenport is hereby approved provided that such acquisition shall not be consummated (a) within 7 calendar days after the date of this Order or (b) later than 3 months after said date.

Dated at Washington, D.C., this 27th day of March 1963.

By order of the Board of Governors.[2]

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 63–3379; Filed, Apr. 1, 1963; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–3421]

CONTINENTAL VENDING MACHINE CORP.

Order Summarily Suspending Trading

MARCH 27, 1963.

The common stock, 10 cents par value, of Continental Vending Machine Corp., being listed and registered on the American Stock Exchange and having unlisted trading privileges on the Philadelphia-Baltimore-Washington Stock Exchange, and the 6 percent convertible subordinated debentures due September 1, 1976, being listed and registered on the American Stock Exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such securities on such Exchanges and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of any such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the American Stock Exchange and the Philadelphia-Baltimore-Washington Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for the period March 28, 1963, through April 6, 1963, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 63–3400; Filed, Apr. 1, 1963; 8:49 a.m.]

[File No. 24A–1566]

FLEX-I-BRUSH, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor and Notice of Opportunity for Hearing

MARCH 27, 1963.

I. Flex-I-Brush, Inc. (issuer), 7400 NW. 7th Avenue, Miami, Florida [Address Given], 475 Westminster Place, Lodi, New Jersey [Actual Address], filed on November 27, 1961, a notification, offering circular and other exhibits relating to a proposed offering of 100,000 shares of its 1 cent par value common stock at $3 per share for an aggregate of $300,000. The offering was commenced on January 31, 1962. According to the issuer's report on Form 2–A filed on October 12, 1962, 18,045 shares have been sold for an aggregate of $54,135. To this date, no revised offering circular has been filed.

II. The Commission has reasonable cause to believe that:

A. An exemption under Regulation A was not available to the issuer since it failed to comply with Rule 255(c) of the Regulation which requires that a notification shall be filed with the Regional Office for the region in which an issuer's principal business operations are conducted or proposed to be conducted.

B. The notification and offering circular fail to meet the requirements of Regulation A, contain untrue statements of material facts, omit to state material facts and contain a materially misleading presentation of facts in that:

1. The notification falsely states the location of the issuer's present and proposed principal business operations and the address of its sales and executive office required by Item 1(c) of Form 1–A.

2. The notification fails to disclose the name and address of each predecessor of

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington 25, D.C., or to the Federal Reserve Bank of Chicago.

[2] Voting for this action: Chairman Martin, and Governors Balderston, Mills, Robertson, Shepardson, and Mitchell. Absent and not voting: Governor King.

the issuer, as required by Item 2(a) of Form 1–A.

3. The notification fails to disclose the name and address of each affiliate of the issuer and the nature of such affiliation, as required by Item 2(b) of Form 1–A.

4. The offering circular states that the issuer leases its principal office and warehouse at 7400 Northwest Seventh Avenue, Miami, Florida, whereas a small auto supply and repair shop is located at that address, one of whose employees, dasignated as a Vice-President and a director of the issuer, performed the sole activity for the issuer of forwarding mail to the issuer's New York address.

5. The offering circular fails to state the name of the issuer's predecessor corporation, or to disclose that this predecessor had operated at a continuous loss until the time the issuer acquired its assets and assumed its liabilities, or to describe the assets acquired or to state the amount of liabilities assumed.

6. The offering circular states that a cost analysis of the issuer's product indicates a cost of approximately 2.15 cents per unit, but fails to disclose that this stated cost per unit was based on a projected value for the production of a quarter million units at full production, for which the issuer had no capacity.

7. The offering circular states that the issuer had on hand orders for 281,000 units of its product, but fails to disclose that 250,000 of these units were based on an order which expired or terminated on the actual date of the issuer's offering circular, and omits to state that the issuer had neither the capacity nor the resources necessary to deliver these products.

8. The offering circular fails to disclose salaries of and advances to officers and directors of the issuer as required by paragraph 9(b) of Schedule I.

9. The offering circular fails to disclose all material transactions between the issuer and its officers, directors, promoters and companies owned or controlled by them as required by paragraph 9(b) of Schedule I, but states that except as disclosed in the offering circular there had been no material transactions between the issuer and these insiders.

10. The offering circular fails to disclose loans advanced to the issuer by the underwriter and by a friend of the underwriter.

11. The offering circular fails to disclose that a part of the proceeds received from the sale of the securities was to be used for a loan to a principal of the underwriter.

C. The issuer has failed to cooperate in that it has failed to file a revised offering circular as required by Rule 256(e) despite numerous requests by letter from the Atlanta Regional Office.

D. The securities were offered and sold in violation of sections 5 and 7 of the Securities Act of 1933, as amended.

III. It appearing to the Commission that it is in the public interest and for the protection of investors that the exemption of the issuer under Regulation A be temporarily suspended.

It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 63-3401; Filed, Apr. 1, 1963; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 776]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 28, 1963.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 65536–A. By order of March 20, 1963, the Transfer Board approved the transfer to Central Union Warehouses, Inc., Indianapolis, Ind., of Certificate No. MC 20320 Sub-1, issued October 20, 1942, to Central Union Truck Terminal, Inc., Indianapolis, Ind.; authorizing the transportation of: General commodities, except commodities in bulk, between Indianapolis, Ind., on the one hand, and, on the other, points and places within 6 miles of Indianapolis, Ind. John E. Lesow, 3737 North Meridian Street, Indianapolis 8, Ind., attorney for applicants.

No. MC–FC 65584. By order of March 21, 1963, the Transfer Board approved the transfer to Clyde R. Sauers, Zelienople, Pa., of Certificate No. MC 71427, issued June 16, 1941, to John Shanta and Michael Shanta, doing business as Shanta Brothers, McKees Rocks, Pa., authorizing the transportation of: Iron and steel products, and compressed gases, from McKees Rocks, Pa., to points in Ohio and Maryland as specified; nursery stock, from Painesville and Auburn Corners, Ohio to Mount Lebanon, Pa.; food products, from Pittsburgh, Pa., to points in West Virginia; castings, lumber, transformers, and electrical supplies, from Pitcairn, Pa., to McKees Rocks, Pa.; and household goods, between points in Allegheny County, Pa., on the one hand, and, on the other, points in Ohio, West Virginia, and Maryland. Edward M. Larkin, 1221 Grant Building, Pittsburgh 19, Pa., attorney for transferee.

No. MC–FC 65724. By order of March 21, 1963, the Transfer Board approved the transfer to C. A. Magill, doing business as Magill Truck Line, Wichita, Kansas, of Certificate No. MC 119355 Sub-1, issued November 1, 1961, to Earl R. Kennedy, doing business as Earl R. Kennedy Trucking, Derby, Kansas, authorizing the transportation of: Burned clay products, from the plant site of Cloud Ceramics, located approximately 7 miles southeast of Concordia, Kans., to points in Missouri (except points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone), and Oklahoma. John E. Jandera, 641 Harrison, Topeka, Kansas, attorney for applicants.

No. MC–FC 65729. By order of March 21, 1963, the Transfer Board approved the transfer to Jack Austin Roesch, doing business as Roesch Transportation Co., San Bernardino, Calif. of Certificate No. MC 119843, issued December 12, 1961, to Riverside Taxicab Company, a Corporation, Riverside, Calif., authorizing the transportation of: Passengers and their baggage, in charter operations, over irregular routes, beginning and ending at Riverside and Santa Ana, Calif. and extending to points in Arizona, New Mexico, Nevada, and Utah. James H. Lyons, 411 West Fifth Street, Los Angeles 13, Calif., attorney for applicants.

No. MC–FC 65735. By order of March 21, 1963, the Transfer Board approved the transfer to Floyd A. Scheib, Inc., Hegins, Pa., of Certificates Nos. MC 117760 and MC 117760 Sub-1, issued April 6, 1959, and August 8, 1960, respectively, to Floyd A. Scheib, doing business as Floyd A. Scheib Trucking Company, Hegins, Pa., authorizing the transportation of: Sand and gravel, from points in Cecil County, Md., to points in York, Adams, and Cumberland Counties, Pa., and Harrisburg, Pa. and from points in Cecil County, Md., to points in Delaware County, Pa., subject to certain restrictions. James D. Williamson, Seventh Floor, Schuylkill Trust Building, Pottsville, Pa., attorney for applicant.

No. MC–FC 65747. By order of March 21, 1963, the Transfer Board approved the transfer to T. F. McArdle, Inc., Shullsburg, Wis., of Certificate No. MC 106571, issued May 11, 1956, to Mc-Mor-Han Trucking, Inc., Shullsburg, Wis., authorizing the transportation of vari-

ous commodities, including Farm machinery, and parts, twine, feed, fertilizer, and building materials, from and to, and between, specified points in Illinois, Wisconsin, and Iowa. Edward Solie, 1 South Pinckney Street, Madison 3, Wis., attorney for applicants.

No. MC–FC 65787. By order of March 26, 1963, the Transfer Board approved the transfer and substitution of Padre Freight Lines, a corporation, Sacramento, Calif., as applicant in the "claimed grandfather rights" proceeding seeking the issuance of a Certificate of Registration, filed February 6, 1963, on Form BOR 99, assigned docket No. MC 121338 (Sub-No. 1), covering operations in interstate or foreign commerce under the former second proviso of section 206(a) (1) of the Act, supported by California Certificate No. 63131, by virtue of the filing of a Form BMC 75 Statement filed May 7, 1962, and accepted June 7, 1962, in the name of Torrey Trucking Inc., National City, Calif., and assigned docket No. MC 121338, covering the transportation of: General commodities, subject to certain conditions, and restrictions, from, to, and between specified points and territories solely within the State of California. Bruce R. Geernaert, 100 Bush Street, San Francisco 4, Calif., attorney for applicants.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 63-3387; Filed, Apr. 1, 1963; 8:47 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 28, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 38238: *Sand from Tishomingo, Miss., to Manchester, Iowa.* Filed by O. W. South, Jr., Agent (No. A4292), for interested rail carriers. Rates on sand, molding, bonded (naturally or otherwise), in carloads, from Tishomingo, Miss., to Manchester, Iowa.

Grounds for relief: Market competition.

Tariff: Supplement 56 to Southern Freight Association, Agent, tariff I.C.C. 1634.

FSA No. 38239: *Tin or terne plate to Florida points.* Filed by O. W. South, Jr., Agent (No. A4295), for interested rail carriers. Rates on tin or terne plate, as described in the application, in carloads, from St. Louis, Mo., and East St. Louis, Ill., to Auburndale, Bartow, Orlando and Winter Garden, Fla.

Grounds for relief: Market competition and rate relationship.

Tariff: Supplement 74 to Southern Freight Association, Agent, tariff I.C.C. S–163.

FSA No. 38240: *Salt from and to points in southwestern territory.* Filed by Southwestern Freight Bureau, Agent (No. B–8370), for interested rail carriers. Rates on salt, as described in the application, in carloads, between points in southwestern territory, on the one hand, and AT&SF Ry., stations in Colorado, Illinois, Iowa, Kansas, Missouri and Nebraska, on the other; also from points in southwestern territory, to points in Illinois Freight and western trunkline territories.

Grounds for relief: Market and carrier competition.

Tariff: Supplement 13 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4506.

FSA No. 38241: *Salt to Hopkins, Minn.* Filed by Western Trunk Line Committee, Agent (No. A–2296), for interested rail carriers. Rates on salt (not table salt), crushed, evaporated or screened, not further processed for human or animal consumption, in bulk, in carloads, from Anthony, Hutchinson, Kanopolis, Lyons and Pawnee Rock, Kans., to Hopkins, Minn.

Grounds for relief: Market competition.

Tariff: Supplement 28 to Western Trunk Line Committee, Agent, tariff I.C.C. A–4369.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

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